

JAMES HOCHBERG, ATTORNEY AT LAW LLLC

James Hochberg, Bar No. 3686

700 Bishop Street, Suite 2100

Honolulu, Hawaii 96813

Telephone: (808) 534-1514

Facsimile: (808) 538-3075

Local Counsel

SUMMER R. LEE*

TX Bar No. 240462283

Assistant Attorney General

General Litigation Division

Office of the Texas Attorney General

P.O. Box 12548 MC019

Austin, Texas 78711-2548

(512) 475-4031/Telephone

(512) 370-9387/Facsimile

**Pro Hac Vice* motion pending

Attorney for Defendant Ken Paxton

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN'S HEALTH; et al.,
Plaintiffs,

vs.

KEN PAXTON, Attorney General of
Texas; et al,
Defendants.

MC Case No. 1:17-mc-00303

[Case No. 1:17-CV-00690-LY,
Pending in the Western District of
Texas Austin Division]

TRIAL DATE: None Set

RESPONDENT ATTORNEY GENERAL OF TEXAS KEN PAXTON'S
RESPONSE TO COURT'S ORDER REGARDING REASONABLENESS OF
DEPOSITION SUBPOENA TO JANE DOE, M.D.

Respondent Defendant Texas Attorney General Ken Paxton files this response pursuant to the Court's order to explain why his subpoena to Dr. Doe, ordering her to appear for a deposition on October 26, 2017, allows a reasonable time to comply.¹

The time for compliance is reasonable because attorneys for Defendant and Dr. Doe have been negotiating mutually agreed terms for her deposition for more than a month and Defendant noticed the deposition at a time and place that Dr. Doe's attorneys had previously indicated she could be available. Movant has not sufficiently articulated a reason why—after being on notice of Defendant's intent to take her deposition since September 20, 2017 and after herself proposing, through her attorneys, an October 26, 2017 deposition date at the place of compliance stated in the subpoena—she requires more than six days to make arrangements to appear. Therefore, Respondent respectfully requests that the Court deny Movant's Motion to Quash.

I. BACKGROUND

Respondent is a defendant in the lawsuit *Whole Woman's Health, et. al v. Ken Paxton, et. al*, Cause No. A-17-CV-690-LY, in the United States District Court, Western District of Texas. This lawsuit was filed by several abortion providers, including Planned Parenthood affiliates in Texas, challenging the constitutionality

¹ To the extent that the Court desires that Respondent address any other issues raised in Movant's Motion to Quash, Respondent will gladly provide additional briefing. Despite weeks of communications with Dr. Doe's attorneys regarding arrangements for her deposition, these attorneys did not serve the Motion to Quash at the time it was filed on October 23, 2017.

of Senate Bill 8 (“SB 8”), a recently enacted abortion law in Texas. SB 8 requires abortion providers to cause fetal demise prior to performing an abortion procedure known as dilation and evacuation (“D&E”).

Plaintiff providers challenge the constitutionality of the law by alleging that the law has the effect of placing a substantial obstacle in the path of a woman who seeks an abortion before the fetus attains viability. The Defendants counter that requiring physicians performing a D&E to cause fetal demise before starting the evacuating phase of the D&E does not impose any significant health risks or burdens on a woman. Defendants contend that one of the three safe and effective methods to induce fetal demise is by administering digoxin. Plaintiff providers allege that using digoxin imposes risks with no medical benefits to the patient, is untested, carries risk, and is not sufficiently effective.

Respondent issued a Subpoena to Jane Doe, M.D. on October 19, 2017, for her deposition on October 26, 2017. Respondent seeks to take the deposition of Dr. Doe based on her prior experience as the Medical Director for Planned Parenthood Federation. While she held that position, Respondent believes Dr. Doe was involved in the creation and enforcement of Planned Parenthood Federation of America policies regarding fetal demise and digoxin, which applied to Texas Planned Parenthood affiliates. In that position, Dr. Doe also issued waivers to Planned Parenthood affiliates allowing them to use digoxin to cause fetal demise prior to an

abortion procedure in particular circumstances, and she monitored the use of digoxin by affiliates.

II. RESPONSE

A. The Subpoena Provided a Reasonable Opportunity to Comply.

Dr. Doe alleges that the Subpoena should be quashed because it fails to provide her a reasonable time to comply. *See* Nonparty Jane Doe, M.D.’s Memorandum in Support of Motion to Quash (“Memorandum”), at 16-17 (Doc. 1-1).

Respondent issued the Subpoena to Dr. Doe on October 19, 2017, for her deposition on October 26, 2017. *See* Doc. 1-4. Dr. Doe’s legal counsel agreed to accept service of the Subpoena. *See* Declaration of Chris Hilton (“Hilton Dec.”) Although Dr. Doe had one week from the date she accepted service of the Subpoena to the date of the noticed deposition, the time for compliance is reasonable because attorneys for Defendant and Dr. Doe have been negotiating mutually agreed terms for her deposition since September 20, 2017 – over one month – from the currently scheduled deposition. *See id.*; *see also* Memorandum at 7 fn 2.

Moreover, Defendant noticed the deposition at a time and place that Dr. Doe’s attorneys had previously indicated she could be available. *See* Hilton Dec. Thus, Dr. Doe has not sufficiently articulated a reason why she requires more than six days to make arrangements to appear at the deposition on October 26, 2017.

The Defendants are under an expedited schedule in the present case. The court issued an order setting trial to begin on November 2, 2017. *See Whole Woman's Health*, Cause No. 1:17-cv-00690-LY (Doc. 73). Respondent set Dr. Doe's deposition date giving as much notice as possible while also keeping in mind the short time frame for discovery in the case.

Federal Rules of Civil Procedure 30(b)(1) requires "reasonable notice in writing" to parties for any deposition. In the Ninth Circuit, "a week to ten day notice is reasonable where the party is seeking a deposition without the production of documents." *Reddy v. Precyse Sols. LLC*, 1:12-CV-02061-AWI-SA, 2015 WL 3407447, at *3 (E.D. Cal. May 26, 2015), *reconsideration denied sub nom. Reddy v. Precyse Sols., Inc.*, 1:12-CV-02061-AWI-SA, 2015 WL 3706058 (E.D. Cal. June 12, 2015) and *reconsideration denied sub nom. Reddy v. Precyse Sols., Inc.*, 1:12-CV-02061-AWI, 2015 WL 3772685 (E.D. Cal. June 16, 2015). One week notice for Dr. Doe's deposition from the issuance of the current Subpoena – and over one month notice from the issuance of the prior Subpoena – was reasonable, especially under the circumstances of this case, and the Court should overrule her objection on that basis.

III. CONCLUSION

Based on the foregoing, Respondent Paxton respectfully requests the Court to find that Dr. Doe was provided with reasonable notice of her deposition on

October 26, 2017, and allow the deposition to go forward.

DATED this 24th day of October, 2017.

OFFICE OF THE TEXAS ATTORNEY GENERAL

/s/ Summer R. Lee

SUMMER R. LEE*

ATTORNEYS FOR RESPONDENT KEN
PAXTON

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the Court's Electronic Court Filing notification system on this the 24th day of October, 2017, to:

Lisa Woods Munger

Nicole Y. Altman

Attorneys for Non-Party Jane Doe, M.D.

/s/ Summer R. Lee

SUMMER R. LEE

Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN'S HEALTH; et al.,
Plaintiffs,

vs.

KEN PAXTON, Attorney General of
Texas; et al,
Defendants.

MC Case No. 1:17-mc-00303

[Case No. 1:17-CV-00690-LY,
Pending in the Western District of
Texas Austin Division]

TRIAL DATE: None Set

DECLARATION OF CHRISTOPHER D. HILTON

I, CHRISTOPHER D. HILTON, hereby declare:

1. I represent the participating district attorneys¹ in *Whole Woman's Health v. Paxton*, Cause No 1:17-CV-00690-LY, in the United States District Court for the Western District of Texas, Austin Division. I have appeared in this case solely in my capacity as an Assistant District Attorney/Assistant Criminal District Attorney for the participating district attorneys. I make this Declaration in support of Ken Paxton's Response to Nonparty Jane Doe, M.D.'s Motion to Quash Deposition Subpoena. I have personal knowledge of the facts set forth below.

¹ The Defendants who I represent are Faith Johnson, District Attorney for Dallas County; Sharen Wilson, Criminal District Attorney for Tarrant County; and Abelino Reyna, Criminal District Attorney for McLennan County.

2. I am an attorney licensed to practice in the State of Texas. I have aided the Assistant Attorneys General who represent Ken Paxton in pursuing and coordinating the deposition of [REDACTED] in this matter.

3. On September 20, 2017, Michael Bopp agreed to accept service of a subpoena issued by counsel for Ken Paxton for the deposition of [REDACTED]. *See* Attachment A.

4. Over the following days and weeks, counsel for Ken Paxton (including Darren McCarty and Andrew Stephens) and I exchanged numerous emails and participated in numerous phone calls with counsel for [REDACTED] regarding the subpoena and her deposition. We repeatedly explained the importance of [REDACTED] testimony as the [REDACTED].

5. As early as October 5, 2017, counsel for [REDACTED], Perlette Jura, offered the week of October 23rd as a time period during which [REDACTED] would be available for deposition. Ms. Jura also represented on October 5, 2017, that it would take her “a few days to draft up the proposed documents” in order to attempt to reach agreement regarding the judicial protections that [REDACTED] was seeking. *See* Attachment B.

6. In the interest of attempting to reach an agreement, we agreed to significant limits on the scope of [REDACTED] deposition. Those topics were set out in writing no later than October 6, 2017, although they had been discussed extensively in prior phone calls. *See* Attachment C.

7. On October 10, 2017, Vanessa Adriance sent a letter on behalf of Ms. Jura setting forth the proposed protections that [REDACTED] would seek as a condition of testifying. *See* Attachment D. We did not receive drafts of any filings until October 13, 2017. *See* Attachment E.

8. On October 16, 2017, Ms. Adriance offered October 26th as a date that “would work” for [REDACTED] deposition. We provided edits to [REDACTED] proposed drafts on October 17, 2017. Ms. Jura responded to our comments to her drafts on October 19, 2017, to which we replied on October 20, 2017. Counsel for [REDACTED] did not respond to the substance of our October 20, 2017 email except to confirm that she would accept service of the amended subpoena for a deposition on October 26th. *See* Attachment E. This date was chosen for the deposition because it had been offered by counsel for [REDACTED].

9. Despite over a month of communications with Perlette Jura, Michael Bopp, and counsel for Plaintiff Planned Parenthood entities, Melissa Cohen, who filed a declaration attached to the underlying motion, Defendants did not receive any notice that a motion to quash had been filed until 7:07 PM EST (2:07 PM HST) on October 24, 2017, when Sandy Hita forwarded a copy of this Court’s order. Unredacted copies of [REDACTED] filings were not provided until they were requested. By the time that such unredacted filings were provided, approximately three hours and thirteen minutes were left until the deadline set by this Court for a response. *See* Attachment F.

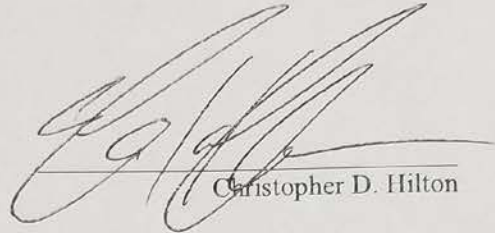
10. Throughout our discussions, we repeatedly expressed our willingness not to use or discuss the videos which concern [REDACTED] so greatly. To the extent that there was any ambiguity regarding this point, I attempted to clarify the issue in my October 20, 2017 email. *See* Attachment F.

11. As [REDACTED] and her counsel are well aware, discovery in this matter is expedited, and trial is set to being on November 2, 2017.

12. The attached documents are true and correct copies of emails that were exchanged between myself, counsel for Ken Paxton, and counsel for [REDACTED].

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of October, 2017, in Naples, Florida.



Christopher D. Hilton

From: [Hilton, Christopher](#)
To: [Bopp, Michael D.](#)
Cc: [Martinez, Tamera](#); [Biggs, Adam](#)
Subject: RE: Subpoena of Dr. Nucatola - Whole Woman's Health v. Paxton
Date: Wednesday, September 20, 2017 5:41:00 PM
Attachments: [REDACTED] [Signed.pdf](#)

Michael,

Thank you for agreeing to accept service. The subpoena for Dr. [REDACTED] is attached.

Talk to you tomorrow.

Thanks,
Chris

Christopher D. Hilton

Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
Phone: (512) 475-4120
Fax: (512) 320-0667
Christopher.Hilton@oag.texas.gov

From: Hilton, Christopher
Sent: Wednesday, September 20, 2017 5:02 PM
To: 'Bopp, Michael D.' <MBopp@gibsondunn.com>
Cc: Martinez, Tamera <Tamera.Martinez@oag.texas.gov>; Biggs, Adam <Adam.Biggs@oag.texas.gov>
Subject: RE: Subpoena of Dr. [REDACTED] - Whole Woman's Health v. Paxton

Thanks

Christopher D. Hilton

Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
Phone: (512) 475-4120
Fax: (512) 320-0667
Christopher.Hilton@oag.texas.gov

From: Bopp, Michael D. [<mailto:MBopp@gibsondunn.com>]
Sent: Wednesday, September 20, 2017 4:55 PM
To: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>

Cc: Martinez, Tamera <Tamera.Martinez@oag.texas.gov>; Biggs, Adam <Adam.Biggs@oag.texas.gov>

Subject: RE: Subpoena of Dr. [REDACTED] - Whole Woman's Health v. Paxton

Running a bit late getting back to the office. Will try you shortly.

Michael Bopp

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.955.8256 • Fax +1 202.530.9648
MBopp@gibsondunn.com • www.gibsondunn.com

From: Hilton, Christopher [<mailto:Christopher.Hilton@oag.texas.gov>]

Sent: Wednesday, September 20, 2017 3:13 PM

To: Bopp, Michael D. <MBopp@gibsondunn.com>

Cc: Martinez, Tamera <Tamera.Martinez@oag.texas.gov>; Biggs, Adam <Adam.Biggs@oag.texas.gov>

Subject: RE: Subpoena of Dr. [REDACTED] - Whole Woman's Health v. Paxton

Sure, call me when you're available. In case I don't pick up my office phone, my cell phone number is

[REDACTED].

Thanks,
Chris

Christopher D. Hilton

Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
Phone: (512) 475-4120
Fax: (512) 320-0667
Christopher.Hilton@oag.texas.gov

From: Bopp, Michael D. [<mailto:MBopp@gibsondunn.com>]

Sent: Wednesday, September 20, 2017 2:10 PM

To: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>

Cc: Martinez, Tamera <Tamera.Martinez@oag.texas.gov>

Subject: Re: Subpoena of Dr. [REDACTED] - Whole Woman's Health v. Paxton

Chris -

I am in meetings out of the office until later this afternoon. But can we talk at 5:30 or 6:00 pm?

Thanks.

Michael

Michael Bopp

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

[1050 Connecticut Avenue, N.W., Washington, DC 20036-5306](https://www.gibsondunn.com/1050-Connecticut-Avenue-N.W.-Washington-DC-20036-5306)

Tel [+1 202.955.8256](tel:+12029558256) • Fax [+1 202.530.9648](tel:+12025309648)

MBopp@gibsondunn.com • www.gibsondunn.com

On Sep 20, 2017, at 3:04 PM, Hilton, Christopher <Christopher.Hilton@oag.texas.gov> wrote:

Mr. Bopp,

Thank you for calling me earlier, and I apologize that I missed you. Please let me know when it would be convenient for you today to discuss the subpoena for [REDACTED].

Thanks,

Chris

Christopher D. Hilton

Assistant Attorney General

General Litigation Division

Office of the Attorney General

P.O. Box 12548

Austin, TX 78711-2548

Phone: (512) 475-4120

Fax: (512) 320-0667

Christopher.Hilton@oag.texas.gov

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: [Bopp, Michael D.](#)
To: [Hilton, Christopher](#); [Jura, Perlette Michèle](#)
Cc: [Stephens, Andrew](#); [McCarty, Darren](#); [Martinez, Tamera](#)
Subject: RE: Your voicemail
Date: Friday, October 06, 2017 5:41:08 PM

Thanks, Chris. We will respond more comprehensively but can you please explain under what circumstances you are proposing to possibly question Dr. [REDACTED] on the Daleiden videos? I don't understand your point about using them to impeach Dr. [REDACTED]. If they aren't used or referred to, how could something come up that would open up their use to impeach?

Michael

Michael Bopp

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.955.8256 • Fax +1 202.530.9648
MBopp@gibsondunn.com • www.gibsondunn.com

From: Hilton, Christopher [mailto:Christopher.Hilton@oag.texas.gov]
Sent: Friday, October 6, 2017 6:28 PM
To: Jura, Perlette Michèle <PJura@gibsondunn.com>; Bopp, Michael D. <MBopp@gibsondunn.com>
Cc: Stephens, Andrew <Andrew.Stephens@oag.texas.gov>; McCarty, Darren <Darren.McCarty@oag.texas.gov>; Martinez, Tamera <Tamera.Martinez@oag.texas.gov>
Subject: RE: Your voicemail

Perlette,

The following are the topics that will be the subject of Dr. [REDACTED]'s deposition:

- The use, safety, and efficacy of techniques for causing fetal demise, including digoxin, potassium chloride (KCl), and umbilical cord transection
- Articles and/or studies participated in or written by Dr. [REDACTED]
- Dr. [REDACTED]'s work for PPFA and personal knowledge of PPFA practices
- Documents, including policies, procedures, and other communications, related to the above

We cannot agree to allow you to unilaterally decide to stop the deposition if you think a topic of questioning is outside the agreed upon scope. However, we would suggest that you can call the special master appointed in the Texas litigation (Karl Bayer) if you think the scope of questioning is overly broad. Additionally, we would like more information regarding your line of concerns related to Dr. [REDACTED] offering expert testimony. Any authority you have on the issue would be helpful for us to understand the scope of your objection.

Finally, although we do not intend to bring up the Daleiden videos, we may need to reserve the right to question Dr. [REDACTED] about them to the extent that she opens the door with her answers or for

purposes of impeachment.

We await your draft filings concerning the protective order as we discussed.

Thanks,
Chris

From: Jura, Perlette Michèle [<mailto:PJura@gibsondunn.com>]
Sent: Friday, October 06, 2017 8:10 AM
To: Bopp, Michael D. <MBopp@gibsondunn.com>
Cc: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>; Martinez, Tamera <Tamera.Martinez@oag.texas.gov>
Subject: Re: Your voicemail

Just seeing this. I will call in now.

On Oct 6, 2017, at 5:56 AM, Bopp, Michael D. <MBopp@gibsondunn.com> wrote:

We can use this dial-in but let's make sure this still works for Perlette:

866-747-5969
passcode: 202-955-8256

Michael Bopp

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.955.8256 • Fax +1 202.530.9648
MBopp@gibsondunn.com • www.gibsondunn.com

From: Hilton, Christopher [<mailto:Christopher.Hilton@oag.texas.gov>]
Sent: Friday, October 6, 2017 8:55 AM
To: Jura, Perlette Michèle <PJura@gibsondunn.com>
Cc: Bopp, Michael D. <MBopp@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>; Martinez, Tamera <Tamera.Martinez@oag.texas.gov>
Subject: Re: Your voicemail

We can chat now. What number should we call

From: Jura, Perlette Michèle <PJura@gibsondunn.com>
Sent: Thursday, October 5, 2017 11:21:09 PM
To: Hilton, Christopher

Cc: Bopp, Michael D.

Subject: Re: Your voicemail

Got it. Looks like my flight schedule tomorrow will be tricky. Would it be possible for us to speak a little earlier tomorrow - say 6 am pacific (9 am eastern)? Or, I'd be happy to do a call Saturday between 9 am and noon pacific. I'm also free almost all day Sunday.

On Oct 5, 2017, at 3:26 PM, Hilton, Christopher
<Christopher.Hilton@oag.texas.gov> wrote:

Early afternoon CST would be best for us

From: Jura, Perlette Michèle <PJura@gibsondunn.com>

Sent: Thursday, October 5, 2017 4:22:02 PM

To: Hilton, Christopher

Cc: Bopp, Michael D.

Subject: Your voicemail

Chris,

I received your voicemail asking for a call. I'm tied up the rest of the afternoon, but Michael and I could do a call tomorrow if you like. Let me know your windows of availability and we'll figure out a mutually agreeable time. Thanks!

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: [Adriance, Vanessa C.](#)
To: [Hilton, Christopher](#)
Cc: [Jura, Perlette Michèle](#); [Bopp, Michael D.](#); [Stephens, Andrew](#); [McCarty, Darren](#); [Martinez, Tamera](#)
Subject: Whole Women's Health v. Paxton
Date: Tuesday, October 10, 2017 1:52:47 PM
Attachments: [2017.10.10 Letter to Christopher Hilton.pdf](#)

Counsel,

Thank you for your email of last Friday. We have conferred with our client, and we attach a letter here confirming our understanding of our conversations and prior correspondence. We will move forward with finalizing our papers seeking a protective order from the Court in conformity with the attached.

Thank you and have a pleasant afternoon.

Vanessa

Vanessa C. Adriance

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7754 • Fax +1 213.229.6754
VAdriance@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: [Adriance, Vanessa C.](#)
To: [Hilton, Christopher](#)
Cc: [Jura, Perlette Michèle](#); [Bopp, Michael D.](#); [Stephens, Andrew](#)
Subject: Re: Whole Women's Health
Date: Monday, October 23, 2017 7:48:50 PM

Chris,

We are now authorized to accept service of your new subpoena to Dr. [REDACTED]. You may direct it to me or to Michael Bopp in our Washington DC office. Thank you.

Have a good evening,

Vanessa

Vanessa C. Adriance

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
[333 South Grand Avenue, Los Angeles, CA 90071-3197](#)
Tel [+1 213.229.7754](#) • Fax [+1 213.229.6754](#)
VAdriance@gibsondunn.com • www.gibsondunn.com

On Oct 20, 2017, at 12:41 PM, Hilton, Christopher <Christopher.Hilton@oag.texas.gov> wrote:

Your motion contained a lot of language that we could not agree to. This is an unopposed motion and could realistically be a paragraph or two in length. Your filings here are not the appropriate place to rehash everything surrounding the Daleiden videos, especially because we will not be asking Dr. [REDACTED] about them.

We are not opposed to filing her testimony under seal and referring to her testimony by pseudonym. However, as we have explained several times, Dr. [REDACTED]'s name has come up in several depositions and appears on documents and policies, and she has authored numerous articles. The language of your order would require us to, for example, redact her name from her own studies, which we cannot agree to.

We can agree that the video will not be used, and we have no intention to ask about any patient information. I thought that this was clear from our last conversation, but to the extent that it wasn't, you can have that assurance.

If you'd like to discuss this further, we remain willing to do so. Please let us know as soon as possible if we need to move the location of the deposition, as we need to book travel arrangements.

Thanks,
Chris

From: Jura, Perlette Michèle [<mailto:PJura@gibsondunn.com>]
Sent: Thursday, October 19, 2017 5:03 PM
To: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>; Bopp, Michael D. <MBopp@gibsondunn.com>
Cc: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>
Subject: RE: Whole Women's Health

Chris,

We have reviewed your proposed changes and we do not agree with them. As you know, we have done a lot of work drafting the papers and we've had numerous calls with your team. At this point, we are willing to talk further, but it does not look like we are going to reach an agreement. Your edits strike specific, simple protections that we had previously discussed. For example, on our last call, we thought we reached agreement that witnesses be asked to refer to our client by a pseudonym so that her name is not connected with the trial in a public way. But you have stricken the provisions intended to keep her identity out of the public record from our draft motion. Likewise, for the sake of her patients, it is important that you confirm up front that they will not be asked about. Yet you have stricken that specific exclusion from the topics as well. Nor have you provided any assurance that you will not use the CMP videos (which themselves disclose Dr. [REDACTED]'s identity in the most inflammatory fashion and thus expose her to significant risk) in your trial.

I can ask Deb if we are authorized to accept service if you want to serve a new subpoena for Hawaii. At this time I do not have her authorization, so I'll need to ask.

Perlette Michèle Jura

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7121 • Fax +1 213.229.6121
PJura@gibsondunn.com • www.gibsondunn.com

From: Hilton, Christopher [<mailto:Christopher.Hilton@oag.texas.gov>]
Sent: Wednesday, October 18, 2017 5:55 PM
To: Jura, Perlette Michèle <PJura@gibsondunn.com>; Bopp, Michael D. <MBopp@gibsondunn.com>
Cc: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>
Subject: RE: Whole Women's Health

Perlette and Michael,

We will be serving an amended subpoena tomorrow morning. Please advise as to whether you will accept service. Additionally, please advise as to whether you will agree to a date and location.

Thanks,
Chris

From: Hilton, Christopher
Sent: Tuesday, October 17, 2017 12:56 PM
To: 'Jura, Perlette Michèle' <PJura@gibsondunn.com>
Cc: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>; Bopp, Michael D. <MBopp@gibsondunn.com>
Subject: RE: Whole Women's Health

As I said, we will respond soon regarding your drafts. However, we need a deposition date and location regardless. I don't understand the issue with providing a date for the deposition and confirmation that you will accept service. We will just re-notice for Hawaii if you can't agree to LA.

Thanks,
Chris

From: Jura, Perlette Michèle [<mailto:PJura@gibsondunn.com>]
Sent: Tuesday, October 17, 2017 12:41 PM
To: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>
Cc: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>; Bopp, Michael D. <MBopp@gibsondunn.com>
Subject: Re: Whole Women's Health

We are still trying to figure out, but I do know that for now, we don't have agreement on moving the depo to LA. I am growing very concerned that you are making substantial edits or planning to change the parameters of what we're trying to reach agreement on. We took the laboring oar here and have done our best to be cooperative. We would like to see your proposed edits before doing even more heavy lifting on our side.

Thanks,
Perlette

On Oct 17, 2017, at 10:02 AM, Hilton, Christopher <Christopher.Hilton@oag.texas.gov> wrote:

We will be responding to your drafts this afternoon. However, regardless of whether we reach agreement, we need to know a date and location for the deposition and whether you will agree to accept service. Please respond with that today, as we need

to issue a new subpoena.

Thanks,
Chris

From: Adriance, Vanessa C. [<mailto:VAdriance@gibsondunn.com>]
Sent: Monday, October 16, 2017 7:40 PM
To: Hilton, Christopher <Christopher.Hilton@oag.texas.gov>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>
Cc: Jura, Perlette Michèle <PJura@gibsondunn.com>; Bopp, Michael D. <MBopp@gibsondunn.com>
Subject: RE: Whole Women's Health

Hi, Chris,

I know you all are waiting on us for dates and locations, and so I wanted to get back to you. It looks like the 25th or 26th would work as far as dates. Tentatively our Los Angeles offices looks like it will probably work as a location, but I'm still confirming that. If the location were at our office, we could also provide breakout rooms for counsel. But any agreement is subject to our seeing any comments you may have on the drafts we sent last week, and our reaching final agreement on those documents and the parameters of any deposition more generally. As such, we are not waiving any objections at this time by providing dates and a location. But we didn't want to leave you hanging because we understand that you're under some time pressure.

Thanks and have a great evening,

Vanessa

Vanessa C. Adriance

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7754 • Fax +1 213.229.6754
VAdriance@gibsondunn.com • www.gibsondunn.com

From: Hilton, Christopher [<mailto:Christopher.Hilton@oag.texas.gov>]
Sent: Monday, October 16, 2017 8:32 AM
To: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>
Cc: Jura, Perlette Michèle <PJura@gibsondunn.com>; Bopp, Michael D. <MBopp@gibsondunn.com>
Subject: RE: Whole Women's Health

We are still reviewing these drafts, but will respond as soon as possible. Please provide deposition dates and an agreeable location today

Thanks,
Chris

From: Hilton, Christopher
Sent: Friday, October 13, 2017 1:11 PM
To: Adriance, Vanessa C. <VAdriance@gibsondunn.com>; Stephens, Andrew <Andrew.Stephens@oag.texas.gov>
Cc: Jura, Perlette Michèle <PJura@gibsondunn.com>; Bopp, Michael D. <MBopp@gibsondunn.com>
Subject: Re: Whole Women's Health

Thanks, we will review and respond. What dates are available for the deposition

From: Adriance, Vanessa C. <VAdriance@gibsondunn.com>
Sent: Friday, October 13, 2017 12:49:48 PM
To: Hilton, Christopher; Stephens, Andrew
Cc: Jura, Perlette Michèle; Bopp, Michael D.
Subject: Whole Women's Health

Chris and Andrew,

Per our conversation yesterday and my email of last night, attached please find working drafts of our motion for protective order, proposed protective order, motion to seal, and related supporting declarations, which we propose to file. Note that these have not been finalized yet, so they remain subject to revision. Nevertheless, we understand you are under time constraints and so wanted to get this to you today.

Attached please find our working drafts of the following documents:

1. Unopposed motion for protective order
2. Proposed protective order.
3. Doe declaration in support of same
4. Cohen declaration in support of same
5. Bopp declaration in support of same
6. Motion to seal Exhibit 1 of the Bopp declaration.

Please let us know if you want to discuss.

Thank you and best regards,

Vanessa

Vanessa C. Adriance

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7754 • Fax +1 213.229.6754
VAdriance@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: [Adriance, Vanessa C.](#)
To: [Hilton, Christopher](#); [Hita, Sandy](#); [Stephens, Andrew](#); pat@piofca.com; jcrepps@reprorights.org; mduane@reprorights.org; alawrence@mofo.com; melissa.cohen@ppfa.org
Cc: www.goodsill.com; naltman@goodsill.com; [Bopp, Michael D.](#); [Jura, Perlette Michèle](#); [McCarty, Darren](#); [Martinez, Tamera](#)
Subject: RE: Whole Woman's Health et al. v. Ken Paxton, et al.
Date: Tuesday, October 24, 2017 7:47:35 PM
Attachments: [6589732_1 \[1\] Doe Motion to Quash Depo Subpoena \(f 10-23-17\).pdf](#)
[6589785_1 \[3\] Doe EPM for Leave to FUS Portions of \[1\] Doe Motion to Ou....pdf](#)
[6589796_1 \[4\] Doe EPA to Shorten Time for Hearing on \[1\] Doe Motion topdf](#)
[Page 5 of Exhibit 1 to Dec of Bopp.pdf](#)
[Pages 1-5 of Dec of Jane Doe.pdf](#)
[Pages 2-3 of Dec of M. Cohen.pdf](#)
[Pages 3-6 of Dec of M. Bopp.pdf](#)
[Portions of MISO Motion to Quash.pdf](#)
[Page 5 of Exhibit 1 to Dec of Bopp.pdf](#)

Chris,

All our filings are attached here, both redacted and unredacted versions.

Vanessa C. Adriance

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7754 • Fax +1 213.229.6754
VAdriance@gibsondunn.com • www.gibsondunn.com

From: [Hilton, Christopher \[mailto:Christopher.Hilton@oag.texas.gov\]](mailto:Christopher.Hilton@oag.texas.gov)
Sent: Tuesday, October 24, 2017 5:38 PM
To: [Hita, Sandy <SCHita@gibsondunn.com>](mailto:SCHita@gibsondunn.com); [Stephens, Andrew <Andrew.Stephens@oag.texas.gov>](mailto:Andrew.Stephens@oag.texas.gov); pat@piofca.com; jcrepps@reprorights.org; mduane@reprorights.org; alawrence@mofo.com; melissa.cohen@ppfa.org
Cc: www.goodsill.com <lmunger@goodsill.com>; naltman@goodsill.com; [Bopp, Michael D. <MBopp@gibsondunn.com>](#); [Jura, Perlette Michèle <PJura@gibsondunn.com>](mailto:PJura@gibsondunn.com); [Adriance, Vanessa C. <VAdriance@gibsondunn.com>](mailto:VAdriance@gibsondunn.com); [McCarty, Darren <Darren.McCarty@oag.texas.gov>](mailto:Darren.McCarty@oag.texas.gov); [Martinez, Tamera <Tamera.Martinez@oag.texas.gov>](mailto:Tamera.Martinez@oag.texas.gov)
Subject: RE: Whole Woman's Health et al. v. Ken Paxton, et al.

Please send us unredacted versions of your filings immediately.

From: [Hita, Sandy \[mailto:SCHita@gibsondunn.com\]](mailto:SCHita@gibsondunn.com)
Sent: Tuesday, October 24, 2017 7:07 PM
To: [Hilton, Christopher <Christopher.Hilton@oag.texas.gov>](mailto:Christopher.Hilton@oag.texas.gov); [Stephens, Andrew <Andrew.Stephens@oag.texas.gov>](mailto:Andrew.Stephens@oag.texas.gov); pat@piofca.com; jcrepps@reprorights.org; mduane@reprorights.org; alawrence@mofo.com; melissa.cohen@ppfa.org
Cc: www.goodsill.com <lmunger@goodsill.com>; naltman@goodsill.com; [Bopp, Michael D. <MBopp@gibsondunn.com>](#); [Jura, Perlette Michèle <PJura@gibsondunn.com>](mailto:PJura@gibsondunn.com); [Adriance, Vanessa](mailto:VAdriance@gibsondunn.com)

C. <VAdriance@gibsondunn.com>

Subject: Whole Woman's Health et al. v. Ken Paxton, et al.

Counsel,

The attached is served at the direction of Vanessa Adriance.

Thank you.

Sandy Hita
Legal Secretary

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7557 • Fax +1 213.229.7520
SCHita@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.
