

IN THE SUPREME COURT OF OHIO

CASE NO. 2007-0376

ON APPEAL FROM
THE COURT OF APPEALS OF CUYAHOGA COUNTY
EIGHTH JUDICIAL DISTRICT
CASE NO. CA 06 87826

KENNETH C. HAGEMAN,

Plaintiff-Appellant

-vs-

SOUTHWEST GENERAL HEALTH CENTER, et al.,

Defendants-Appellees

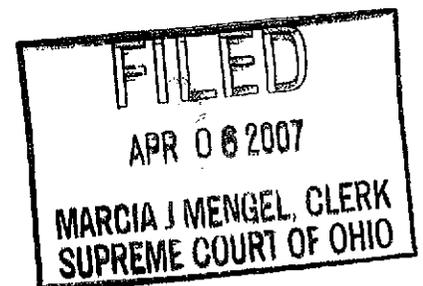
**DEFENDANTS-APPELLEES THOMAS J. THYSERIL, M.D. AND OAK TREE
BEHAVIORAL HEALTH'S MEMORANDUM IN RESPONSE TO PLAINTIFF-
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

DONALD H. SWITZER, ESQ. (0017512)
PETER A. HOLDSWORTH (0075211)
Bonezzi Switzer Murphy Polito
& Hupp Co. L.P.A.
1950 Penton Media Building
1300 East Ninth Street
Cleveland, Ohio 44114
216-875-2767 Telephone
216-875-1570 Facsimile

Attorneys for Defendants-Appellees
Thomas J. Thysseril, M.D.
Oak Tree Behavioral Health

JAMES E. BOULAS, ESQ. (0070007)
JIM PETROPOULEAS, ESQ. (0077485)
James E. Boulas Co., L.P.A.
Raintree Plaza
7914 Broadview Road
Broadview Heights, Ohio 44147-1205
440-526-8822 Telephone
440-838-8822 Facsimile

Attorney for Plaintiff-Appellant
Kenneth C. Hageman



JEFFREY VAN WAGNER, ESQ. (0021913)
KATE E. RYAN, ESQ. (0068248)
Ulmer & Berne, L.L.P.
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448
216-931-6000 Telephone
216-931-6001 Facsimile

Attorneys for Defendant-Appellee
Southwest General Health Center

JACOB A. H. KRONENBERG, ESQ. (0015574)
Law Office of Jacob A. H. Kronenberg
4403 St. Clair Avenue, N.E.
Cleveland, Ohio 44103-1125
216-426-2970 Telephone
216-431-0164 Facsimile

Attorney for Defendant-Appellee
Barbara A. Belovich

SHEILA A. MCKEON, ESQ.
Gallagher Sharp
420 Madison Avenue, Suite 1250
Toledo, Ohio 43604
419-241-4806 Telephone
419-241-4866 Facsimile

Attorney for Defendant-Appellee
Janice Galehouse-Hageman

TABLE OF CONTENTS

	<u>Page</u>
I. EXPLANATION OF WHY NO CONSTITUTIONAL QUESTION EXISTS AND WHY THIS CASE IS NEITHER OF PUBLIC NOR GREAT GENERAL INTEREST.....	1
II. STATEMENT OF THE CASE AND FACTS.....	2
III. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW.....	6
A physician or hospital is privileged to disclose otherwise confidential medical information in those special situations where disclosure is made in accordance with a statutory mandate or common-law duty, or where disclosure is necessary to protect or further a countervailing interest that outweighs the patient's interest in confidentiality. <i>Biddle v. Warren Gen. Hosp.</i> (1999), 86 Ohio St. 3d 395, followed.....	6
A. This case is neither of public nor great general interest because the appellate court properly applied Ohio law in holding that Plaintiff waived his physician-patient privilege.....	8
B. Plaintiff's request that this Court create a new law requiring a written authorization for the release of medical records is prohibited by Ohio law.....	11
IV. CONCLUSION.....	13
CERTIFICATE OF SERVICE.....	14

I. EXPLANATION OF WHY NO CONSTITUTIONAL QUESTION EXISTS AND WHY THIS CASE IS NEITHER OF PUBLIC NOR GREAT GENERAL INTEREST

This Court should refuse to accept jurisdiction of this case since no constitutional question exists, and it involves neither an issue of great public interest nor does it present any unique questions of law. Plaintiff merely seeks to have this court second-guess the holdings of the trial court and the appellate court that Plaintiff waived the physician-patient privilege that had previously applied to his psychiatric/medical records.

This case arises out of a contentious domestic relations case, and the subsequent production of Plaintiff's psychiatric records pursuant to a subpoena. Plaintiff seeks to hold his psychiatrist, Defendant-Appellee Dr. Thomas Thysseril, and others liable for the production of his psychiatric records. However, Plaintiff does not dispute that he waived the physician-patient privilege applicable to the records by (1) seeking custody of a minor child, and (2) by asking Dr. Thysseril to prepare a written report for use in the domestic relations case. Instead, Plaintiff asks this Court to ignore long-standing Ohio law regarding the waiver of the physician-patient privilege, and draw a meaningless distinction between a civil domestic violence hearing that was conducted under the same case number as the domestic relations case before the same trial court, counsel and parties. Plaintiff also asks this Court to clearly violate the Ohio law by (1) creating a new law (that the physician-patient privilege can only be waived in writing), and (2) then applying the new law *ex post facto* to the Defendants to create liability.

Both the trial court and the Eighth District Court of Appeals properly rejected Plaintiff's meritless arguments. Accordingly, no constitutional question exists and this case is neither of public interest, nor great general interest. Therefore, this Court should refuse to accept jurisdiction of Plaintiff's appeal.

II. STATEMENT OF CASE AND FACTS

This case arises from a contentious divorce and child custody dispute in the matter of *Janice Galehouse-Hageman v. Kenneth C. Hageman*, Case No. DR-03-291086 (“Case No. 291086”) between Plaintiff and his former wife, Ms. Galehouse-Hageman.

From January 10, 2003 through July 23, 2003, Plaintiff was a psychiatric patient of Dr. Thysseril at Oak Tree Behavioral Health. Plaintiff’s wife, Ms. Galehouse-Hageman, was present during Plaintiff’s initial appointment with Dr. Thysseril on January 10, 2003. At this appointment, Dr. Thysseril diagnosed Plaintiff with Bipolar 1 Disorder and documented that Plaintiff had “homicidal thoughts toward his wife.”

On February 19, 2003, Ms. Galehouse-Hageman, by and through her attorney, Barbara A. Belovich, filed for divorce and requested, *ex parte*, a restraining order which the domestic relations court granted. Ms. Galehouse-Hageman’s Affidavit in support stated, in part, that “[m]y husband was recently diagnosed with bipolar disorder, with psychotic paranoid episodes. His behavior has been erratic and threatening. Further, he has been harassing me, stalking me and following me from place to place. I fear that unless restrained by an order of this Court, my husband will continue to abuse, harass, molest, threaten or physically injure me or my children.”

On March 26, 2003, Plaintiff, *pro se*, filed his Answer and Counterclaim to Ms. Galehouse-Hageman’s Complaint for divorce. **Plaintiff’s Counterclaim in Case No. 291086 sought that he be named, “residential parent and legal custodian of and be awarded support for the minor child of the parties.”**

On July 4, 2003, Plaintiff ran Ms. Galehouse-Hageman over with his truck and broke her wrists. The couple’s minor child was a passenger in the Plaintiff’s truck and witnessed Plaintiff’s actions.

On July 9, 2003, Ms. Galehouse-Hageman filed a Petition for a Domestic Violence Civil Protection Order with the court in Case No. 291086. The trial court granted, *ex parte*, the civil protection order and allocated to Ms. Galehouse-Hageman the status of temporary residential parent and legal custodian of the couple's minor child consistent with the statutory provisions. Further, the trial court suspended the contact and visitation rights of the Plaintiff to his minor child. The trial court set this matter for a full hearing on the domestic violence civil protection order on July 17, 2003.

The full hearing on the civil protection order was continued to August 5, 2003, and subsequently rescheduled to September 3, 2003 and then to September 17, 2003. Thereafter, the full hearing was again continued and finally rescheduled for October 17, 2003.

On July 21, 2003, James Boulas, Esq., entered an appearance on behalf of Plaintiff in Case No. 291086. Plaintiff, now represented by counsel, met with Dr. Thysseril on July 23, 2003, at which time, Plaintiff requested that Dr. Thysseril author a report regarding Plaintiff's treatment and prognosis for the court in Case No. 291086. As requested, Dr. Thysseril authored a report, addressed to the domestic relations court, stating, "[a]s long as [Mr. Hageman] remains compliant with treatment recommendations and follow up visits, his prognosis is good." This report was produced to the trial court on or about July 29, 2003 as requested.

On October 10, 2003, Attorney Belovich issued a Trial Subpoena *Duces Tecum* in Case No. 291086 ordering Dr. Thysseril to appear to testify on October 17, 2003 with his medical record for Plaintiff. Due to patient responsibilities, Dr. Thysseril contacted Belovich and inquired of postponing his court appearance. Attorney Belovich informed Dr. Thysseril that in lieu of his appearance, Dr. Thysseril could produce Plaintiff's medical records to Attorney Belovich.

Plaintiff (who was represented by counsel at this time) did not attempt to quash the subpoena issued by Attorney Belovich. Plaintiff did not object to the production of the Plaintiff's medical records. Further, Plaintiff did not seek to have his psychiatric/medical records excluded in any manner from the divorce and custody proceedings. Prior to the civil protection hearing, the parties stipulated to an agreed Order of Protection which was entered by the court.

On December 18, 2003, the domestic relations court appointed Attorney Dominic Antonelli as guardian *ad litem* for the Hageman's minor child. Acting in his capacity as guardian *ad litem*, Attorney Antonelli obtained the psychiatric/medical records of Dr. Thysseril pursuant to an authorization signed by plaintiff.

Subsequently, the Hageman's entered into a Separation Agreement. The parties agreed that Ms. Galehouse-Hageman would be the residential parent and plaintiff agreed that he would have visitation with the child supervised by his father or brother for 60 days. Plaintiff agreed to treat with Dr. Thysseril or another psychiatrist and comply with the treatment recommendations. Further, Plaintiff agreed that he would only be permitted unsupervised visitation with his minor child when the guardian *ad litem* was satisfied with Plaintiff's compliance and the psychiatrist's treatment plan. On September 22, 2004, the trial court accepted the Separation Agreement as the final agreement between the parties in Case No. 291086.

On October 12, 2004, less than one month after the journalization of the Separation Agreement, Plaintiff filed this action seeking damages against Dr. Thysseril and his purported employers, Oaktree Physicians and Southwest General Health Center (collectively referred to as "Dr. Thysseril"); Ms. Galehouse-Hageman; and Attorney Belovich, for the alleged unauthorized disclosure of Plaintiff's psychiatric/medical information in the divorce and custody action.

Each of the Defendants moved for summary judgment on the basis that Plaintiff had waived the physician-patient privilege applicable to Dr. Thyserril's records, and Plaintiff responded to each motion. On February 3, 2006, the trial court granted summary judgment to each of the Defendants.

On February 28, 2006, Plaintiff filed a timely notice of appeal of the trial court's order granting summary judgment to the Defendants. On December 21, 2006, the Eighth District Court of Appeals *unanimously* affirmed the trial court's order granting summary judgment to Dr. Thyserril and Ms. Galehouse-Hageman. (See the Eighth District Court of Appeals' opinion, which is attached to Plaintiff's Memorandum as App. A). The appellate court held:

Appellant waived his doctor-patient privilege when he authorized his physician to submit a report detailing his treatment to the domestic relations court and when he filed an action seeking child custody. Appellant's hearing directly involved the care and custody of his minor child. Knowing that the trial court's determination regarding custody would strongly hinge upon the state of his mental health, appellant authorized his physician to submit a report to the trial court detailing his condition, treatment, and prognosis.

Id. at ¶ 27.

In addition, the appellate court held that Plaintiff waived the physician-patient privilege in Case No. 291086, because Plaintiff's, "interests in confidentiality are far outweighed by the concerns surrounding the care of his daughter." *Id.* at ¶ 29. "**Not only did appellant effectively waive his doctor-patient privilege, but the facts strongly indicate that the safety of his daughter far outweighed his confidentiality as a patient.**" (Emphasis added). *Id.* at ¶ 25.

The appellate court reversed the trial court's order granting summary judgment in favor of Attorney Belovich only because Attorney Belovich, "overstepped her bounds as Galehouse's divorce attorney when she disseminated information regarding [Plaintiff's] psychiatric condition," to the Cuyahoga County Prosecutor's office. *Id.* at ¶ 31.

On March 1, 2007, Attorney Belovich filed a timely Notice of Appeal and Memorandum in Support of Jurisdiction to this Court¹. On March 9, 2007, Plaintiff filed a timely Notice of Appeal and Memorandum in Support of Jurisdiction to this court.

III. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

A PHYSICIAN OR HOSPITAL IS PRIVILEGED TO DISCLOSE OTHERWISE CONFIDENTIAL MEDICAL INFORMATION IN THOSE SPECIAL SITUATIONS WHERE DISCLOSURE IS MADE IN ACCORDANCE WITH A STATUTORY MANDATE OR COMMON-LAW DUTY, OR WHERE DISCLOSURE IS NECESSARY TO PROTECT OR FURTHER A COUNTERVAILING INTEREST THAT OUTWEIGHS THE PATIENT'S INTEREST IN CONFIDENTIALITY. *Biddle v. Warren Gen. Hosp.* (1999), 86 Ohio St. 3d 395, syllabus ¶ 2, followed.

The appellate court's holding affirming summary judgment in favor of Dr. Thysseril was proper, and the court correctly applied long-standing Ohio law regarding the waiver of the physician-patient privilege. Under Ohio law, Plaintiff waived the physician-patient privilege applicable to Dr. Thysseril's medical records for four reasons. First, pursuant to R.C. 3109.04(F)(1), Plaintiff waived the privilege by petitioning for custody of the Hageman's minor child. Second, Plaintiff waived the privilege by affirmatively raising his mental health as an issue in Case No. 291086 by having Dr. Thysseril issue a report regarding Plaintiff's mental health. Third, the privilege was waived because Plaintiff's interests in confidentiality were far outweighed by the concerns surrounding the care of his daughter. Fourth, Plaintiff waived the

¹ Dr. Thysseril takes no position with respect to whether this Court should accept jurisdiction of Attorney Belovich's appeal and review only the narrow proposition of law raised by Attorney Belovich. However, assuming that the Court accepted jurisdiction of Belovich's appeal, the Court should decline jurisdiction of Plaintiff's appeal since it raises no constitutional question, and it involves neither an issue of great public interest nor does it present any unique questions of law.

privilege by failing to make any objection to the subpoena issued to Dr. Thysseril by Attorney Belovich.

Plaintiff does not dispute that he waived the physician-patient privilege in Case No. 291086 by petitioning for custody of the Hageman's minor child and by asking Dr. Thysseril to prepare a report. Instead, Plaintiff seeks to avoid his waiver of the physician-patient privilege, and impose liability against Dr. Thysseril, for two reasons. First, Plaintiff asserts that because the records were subpoenaed by Attorney Belovich for use in a civil domestic violence hearing conducted by the trial court in Case No. 291086, Plaintiff did not waive the privilege. However, Plaintiff's distinction between the civil domestic violence hearing that was conducted in Case No. 291086, and the remainder of Case No. 291086 is meaningless. Plaintiff waived the physician-patient privilege in Case No. 291086, and the trial court, counsel and the parties in Case No. 291086 were all entitled to discover Plaintiff's psychiatric records. The trial court, counsel and parties involved in the civil domestic violence hearing and the remainder of Case No. 291086 were one and the same. As such, Dr. Thysseril's production of records in response to a subpoena issued in Case No. 291086 was warranted as a matter of law, whether or not the records were used in a civil domestic violence hearing.

Secondly, Plaintiff seeks to void his waiver of the physician-patient privilege by urging this Court to create a new law that the physician-patient privilege can only be waived by a written authorization. Plaintiff's proposal fails this Court is prohibited by Ohio law from performing a legislative function of limiting the waiver of the statutorily-created physician-patient privilege. Further, the retroactive application of Plaintiff's new law to create liability against Dr. Thysseril is prohibited as a matter of law.

Accordingly, the trial court and Eighth District Court of Appeals properly applied long-standing Ohio contract law, and this Court should decline jurisdiction to consider this case.

- A. This case is neither of public nor great general interest because the appellate court properly applied Ohio law in holding that Plaintiff waived his physician-patient privilege.**

Plaintiff's first proposition of law, that the waiver of physician-patient privilege did not extend the subpoena issued by Attorney Belovich, is meritless. The trial court and appellate court properly held that Plaintiff waived the privilege that had applied to Dr. Thyserril's records for four reasons.

First, Plaintiff waived the physician-patient privilege by requesting custody of the Hageman's minor child. Pursuant to R.C. 3109.04(F)(1)(e), the court must consider, "the mental and physical health of all persons involved in the situation," any time the custody of the child is disputed by the parents. Whenever the custody of a minor child is disputed by the parents, the physician-patient privilege that the parents hold in their psychiatric records is waived. See *Gill v. Gill*, 2003 Ohio 180; *Neftzer v. Netzer* (2000), 140 Ohio App. 3d 618; *Whiteman v. Whiteman* (Jun. 26, 1995), Butler App. No. CA94-12-229, 1995 Ohio App. Lexis 2700. "We have also held that a party seeking custody of a child in a divorce action makes his or her mental and physical condition an issue to be considered by the court in awarding custody and that the physician-patient privilege does not apply." *Gill*, 2003 Ohio 180 at ¶19.

In this case, Plaintiff actively sought custody of his daughter in Case No. 291086. Plaintiff first request residential custody when he filed his Crossclaim on March 26, 2003 (well before the civil domestic violence hearing). Plaintiff again sought residential custody of the child when his attorney sent a letter making a Counteroffer to Attorney Belovich on July 16,

2004. As such, pursuant to R.C. R.C. 3109.04(F)(1)(e), Plaintiff waived the physician-patient privilege that applied to Dr. Thysseril's records in Case No. 291086.

Second, Plaintiff waived the privilege by affirmatively raising his mental health as an issue in Case No. 291086 by introducing Dr. Thysseril's report. Under R.C. 2317.02(B), a patient waives the physician-patient privilege by voluntarily testifying as to the privileged matter, "which may consist of admitting into evidence records containing privileged communications." *Long v. Isakov* (1989), 58 Ohio App. 3d 46, 52; See also *Gill*, supra. "When a patient elicits testimony as to part of the physician-patient relationship, the privilege is waived as to the entire relationship." *Id.* Accordingly, by introducing the report of Dr. Thysseril stating that Plaintiff's "prognosis is good," in Case No. 291086, Plaintiff waived the physician-patient privilege. Therefore, Dr. Thysseril was authorized as a matter of law to produce Plaintiff's records in Case No. 291086.

Third, the privilege was waived because Plaintiff's interests in confidentiality were far outweighed by the concerns surrounding the care of the Hageman's daughter. This Court has recognized that a physician is authorized to release otherwise confidential medical information, "where disclosure is necessary to protect or further a countervailing interest that outweighs the patient's interest in confidentiality." *Biddle v. Warren Gen. Hosp.* (1999), 86 Ohio St. 3d 395, syllabus ¶ 2. This Court had further stated that the rights of a parent are not absolute, "but are **always subject to the ultimate welfare of the child**, which is the polestar or controlling principle to be observed." (Emphasis added). *In re Cunningham* (1979), 59 Ohio St. 2d 100, 106. Accordingly, the interests of welfare of the Hageman's daughter outweighed Mr. Hageman's interest in the confidentiality of his psychiatric records. As such, Dr. Thysseril was authorized to produce Plaintiff's psychiatric records in Case No. 291086.

Fourth, Plaintiff waived the privilege by failing to make any objection to the subpoena issued to Dr. Thysseril by Attorney Belovich. Pursuant to Evid.R. 103(A)(1), an error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and an objection is made at the time of introduction. See also *Prince v. St. Luke's Hospital* (November 19, 1987), Cuyahoga App. No. 52775. Further, privileged testimony, like other evidentiary matters, is waived by a party's failure to object to its introduction into evidence. *Id.*

In this case, Dr. Thysseril complied with a valid Subpoena *Duces Tecum*. Plaintiff failed to object to the production of the requested psychiatric/medical information by Dr. Thysseril. Plaintiff failed to raise the issue of physician-patient privilege at any time before the trial court in Case No. 289016. Further, Plaintiff did not seek a protective order. Accordingly, Plaintiff's failure to object to the disclosure of his psychiatric/medical information waives any alleged error regarding the disclosure of this information pursuant to the Trial Subpeona issued by Attorney Belovich. As such, as a matter of law, Dr. Thysseril could not be held liable for the unlawful dissemination of privileged information.

In response, Plaintiff concedes that he waived the physician-patient privilege with respect to his treatment with Dr. Thysseril. (See Plaintiff's Memo. in Support of Jurisdiction, p. 2). However, Plaintiff attempts to avoid this waiver by drawing a meaningless distinction between the production the records for use in a civil domestic violence hearing that was scheduled in Case No. 291086 and the remainder of the case. The distinction is meritless because once Plaintiff waived the privilege in Case No. 291086 (for the reasons previously discussed), the court, counsel and the parties in that case – including Ms. Galehouse-Hageman and Attorney Belovich - were permitted to discover Plaintiff's psychiatric records. Thereafter, Attorney Belovich issued

a subpoena to Dr. Thysseril specifically in Case No. 291086. As such, Attorney Belovich and Ms. Hageman were entitled to obtain Plaintiff's psychiatric records in Case No. 291086, and Dr. Thysseril was required by Civil Rule 45 to produce the records. Therefore, the issue of whether Attorney Belovich subpoenaed the records for use in the civil domestic violence hearing or for use in any other facet of Case No. 291086 is entirely meaningless. Plaintiff waived the privilege, and Attorney Belovich and Ms. Galeshouse-Hageman were authorized third-parties entitled to obtain the records.

For these reasons, both the trial court and appellate court properly applied long-standing Ohio law in concluding that Plaintiff waived the physician-patient privilege that had previously applied to his psychiatric records. Therefore, this case does not involve an issue of great public interest and does not present any unique questions of law, and this Court should decline jurisdiction.

B. Plaintiff's request that this Court create a new law requiring a written authorization for the release of medical records is prohibited by Ohio law.

Plaintiff's request that this Court create a judicially recognized "written authorization" limitation on the production of medical records is prohibited as a matter of law.

Plaintiff asks this Court to create a new law requiring a patient to execute a written authorization for the release of medical records before the records can be produced. (See Plaintiff's Memo. In Support of Jurisdiction, p. 9-13). However, this Court, has "consistently rejected" the adoption of judicially created limitations on testimonial privilege statutes. See *Jackson v. Greger* (2006), 110 Ohio St. 3d 488, 491; See also *In re Wieland* (2000), 89 Ohio St.3d 535; *In re Miller* (1992), 63 Ohio St.3d 99. In addressing a request similar to that of Plaintiff in the context of the attorney-client privilege, this Court held, "The General Assembly has chosen to limit the means by which a client's conduct may effect waiver of the attorney-client

privilege. It is not the role of this court to supplant the legislature by amending that choice." (Emphasis added). *Jackson*, supra.

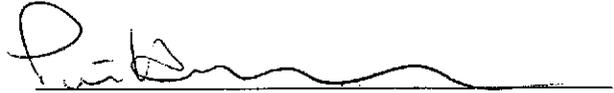
The Ohio General Assembly has set forth the means by which a patient may effect a waiver of the physician-patient privilege (and consequently the release of medical records). See R.C. 2317.02; R.C. 3109.04(F)(1). Nowhere did the legislature require that the waiver be in writing. Accordingly, pursuant to *Jackson*, supra., this Court must not infringe upon the legislative power of the General Assembly, and create a new limitation on the waiver of the physician-patient privilege, as Plaintiff suggests.

The reasons for this conclusion are clear. First, creating a new law as Plaintiff requests would violate the separation of powers doctrine of the Ohio Constitution. See Ohio Constitution, Art. II, Sect. 1; *State ex rel. Rea v. Ohio Dep't of Educ.* (1998), 81 Ohio St. 3d 527, 536 (holding that, "Inherent in the framework of our Constitution's separation of powers is the legislature's power to create and/or change the law.") In addition, the *ex post facto* application of this new law to create liability against Dr. Thysseril, is also prohibited as a matter of law. See Ohio Constitution, Art. II, Sect. 28.

Accordingly, Plaintiff's request that this Court create a new limitation on the waiver of the physician-patient privilege is barred by Ohio law, and fails to create an issue of great public interest or present any unique questions of law. Therefore, this Court should decline jurisdiction of Plaintiff's appeal.

IV. CONCLUSION

For these reasons, this Court should refuse to accept jurisdiction of this case.



Donald H. Switzer, Esq. (0017512)
Peter A. Holdsworth, Esq. (0075211)
Bonezzi Switzer Murphy Polito & Hupp Co. L.P.A.
1300 East Ninth Street
Penton Building, Suite 1950
Cleveland, Ohio 44114
PHONE: (216) 875-2767
FAX: (216) 875-1570
EMAIL: dswitzer@bsmph.com
pholdsworth@bsmph.com

Attorneys for Defendants-Appellees
Thomas J. Thysseril, M.D. and
Oak Tree Physicians, Inc.

CERTIFICATE OF SERVICE

A true and complete copy of the foregoing Memorandum has been served via regular U.S. Mail this 5th day of April 2007 upon the following:

JAMES E. BOULAS, ESQ.
JIM PETROPOULEAS, ESQ.
James E. Boulas Co., L.P.A.
Raintree Plaza
7914 Broadview Road
Broadview Heights, Ohio 44147-1205
440-526-8822 Telephone
440-838-8822 Facsimile

Attorney for Plaintiff-Appellant

JEFFREY VAN WAGNER, ESQ.
KATE E. RYAN, ESQ.
Ulmer & Berne, L.L.P.
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448
216-931-6000 Telephone
216-931-6001 Facsimile

Attorneys for Defendant-Appellee
Southwest General Health Center

SHEILA A. MCKEON, ESQ.
Gallagher Sharp
420 Madison Ave., Suite 1250
Toledo, Ohio 43604
419-241-4806 Telephone
419-241-4866

Attorney for Defendant-Appellee
Janice Galehouse-Hageman

JACOB A. H. KRONENBERG, ESQ.
Law Office of Jacob A. H. Kronenberg
4403 St. Clair Avenue, N.E.
Cleveland, Ohio 44103-1125
216-426-2970 Telephone
216-431-0164 Facsimile

Attorney for Defendant-Appellee
Barbara A. Belovich


DONALD H. SWITZER, ESQ. (0017512)
PETER A. HOLDSWORTH, ESQ. (0075211)