ORIGINAL

**IN THE SUPREME COURT OF OHIO**

**MJH Raichyk, PhD and Mya Raichyk,**
**each individually and**
**MARY J. HUEBENER RAICHYK, Ph.D.**
**PERSONAL REPRESENTATIVE OF**
**E. MICHAEL RAICKYK, Deceased**
**Plaintiff-Appellant,**

**V.**

**SHABBIR SABIR, M.D., et al.**
**Defendant-Appellees.**

**Supreme Court Case No. 2012-0775**

**On Appeal from the 12th District**
**Court of Appeals,**
**Brown County, Case No. 2011-11-025**

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THE RAICHYKS' MOTION TO STRIKE
THE ILL-CONCEIVED AND ILL-STRUCTURED
"MEMORANDUM IN RESPONSE TO PLAINTIFF-APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION AND MOTION TO STRIKE OF DEFENDANT-APPELLEES, SHABBIR SABIR, M.D. AND DAVID C. BECK, M.D. "

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The Raichyks, all Pro Se
1563 Kress Road
Mount Orab, OH 45154-8209
(513) 947-0407
dectiri@earthlink.net
*Pro Se for Plaintiff-Appellants*

Karen A. Carroll (0039350)
Christie Jessica Pratt (0097210)
Rendigs, Fry, Kiely & Dennis, LLP
One West Fourth Street, Suite 900
Cincinnati, OH 45202
(513) 381-9200
kcarroll@rendigs.com
jpratt@rendigs.com
*Attorneys for Defendant-Appellees, Mercy Hospital Clermont, Donna L. Proctor, R.N., & Melody A. Hamilton, R.N.*

Judd R. Uhl (0071370)
Katherine L. Kennedy (0079566)
MANNION & GRAY CO., L.P.A.
909 Wright's Summit Pkwy, Suite 230
Ft. Wright, KY 41011
( 859)-663-9830
juhl@manniongray.com
kkennedy@manniongray.com
*Attorneys for Defendant-Appellees,* ***Shabbir Sabir,*** *M.D. and David C. Beck, M.D.*

Michael F. Lyon (0006749)
Bradley McPeek (0071137)
Lindhorst & Dreidame
312 Walnut Street, Suite 3100
Cincinnati, OH 45202
(513) 421-6630
mlyon@lindhorstlaw.com
bmcpeek@lindborstlaw.com
Attorneys *for* ***Defendant-Appellee, A.X. Bhaskar, M.D.***



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## MEMORANDUM

The Raichyks, the Plaintiffs-Appellants seek to answer the unfounded contentions of cited Case Law in the Sabir/Beck Memorandum opposing jurisdiction, as well as countering the titled Motion to Strike, nowhere identified in the Memorandum document as a separate entity, though seemingly claimed to exist therein because it's claimed in the title as being in the document, which does set up a possible trap in the timing required for countering the components of the document, This Plaintiffs-Appellants' Memorandum will meet the shorter time limit.

The Defendants Sabir/Beck' lawyers have incorrectly applied Case Law to this Appeal. As pointed out in these Raichyks' *Memorandum in Support of Jurisdiction*, the entire next of kin are all adults capable of standing Pro Se and coming here to do so, Pro Se. In contrast, the opposition-cited Case Law examples are all situations where the next of kin include young children, who are by definition unable to stand Pro Se, whether in this case or any other. Hence, in those child-encumbered cases there may be some cautious attention given to safe-guarding their interests in such complicated longterm consequences. That's not the situation in this case, and has been so pointed out, yet the inappropriate application is repeated and expected to stand in this Court as well as having fooled the Appeal Court, despite not being a decent parallel or match-on-points, hence the Sabir/Beck attorney's conclusion is not supported. Thus each of the attorneys' demands to be believed as proof of lack of jurisdiction should be stricken, not swallowed, from this Appeal consideration by this Court.

The Plaintiffs-Appellants are not engaged in the unauthorized practice of law, since each and every party among the Plaintiffs is standing Pro Se as parties concerned and therefore ORC 4705.01 does authorize these efforts by non-lawyer citizens.

Furthermore, 1) the racial rationale for the market for legal representation of aggrieved persons, as well as 2) the trends in demand with relatively inflexible supply, as well as 3) the profit/business

limits of interest for cases involving senior citizens as 'unprofitable' victims have together demonstrated a sufficient public and great general interest which shall continue for demographic reasons such that this Court should exercise jurisdiction over this appeal. These Plaintiffs have demonstrated the existence of these forces in their records before the 12th District Appeal Court in the document titled "*Motion to Address the Judge's Order to Add a Lawyer for the Estate of the Deceased, with Reservations and Evidence*", as the Defendants-Appellees lawyers for Sabir/Beck, et al well know. Therein that document these Plaintiffs-Appellants did demonstrate this case's connection to market forces, using the resources of Pro Seniors, two neighboring county Bar Associations, the two local law schools and the reputations of lawyers among the group who practice in the Wrongful Death and Personal Injury market as well as simple online searching. The results of those contacts, sought for case-intakes and the reasons for rejections are catalogued in that *Motion* document to demonstrate the Cinderella-can-go-to-the-ball nature of the Appeal Judge's Order under step-mother threat of dismissal.

## 1. PROCEDURAL BACKGROUND

The case filed on April 29, 2011 by these Plaintiffs-Appellants was claimed in the opponents' memorandum – not by these Plaintiffs-Appellants -- to be 'medical'. The case was only 'medical' in the opinion of the Defendants who were thereby favoring dismissal on contemptuously trivial grounds of rules for procedure, not for the substance of justice, when their strategy was to require that all should be ignoring their embarrassment – with the lead lawyer absolving himself of all involvement to the distress of his available assistant Kate Kennedy -- at representing their current clients from such clients' own heinous actions. Such actions, in that April 29th case as filed, were presented as grounds for a criminal case involving gross sexual imposition, racial threatening, and likely lethal harming of the Decedent on not just one occasion, but on more than one occasion. As was amply described in the Affidavit by the lead member of the Plaintiffs, acting as the stand-in for the Decedent, now aggrieved and not resting. So let the record show that this Appellees' assertion of 'medicalness' is not factual as

settled and agreed. Unlike the fact that none of these Appellants is a lawyer in Ohio or anywhere else, which is factual and agreed.

In fact, on the issue of 'medical', the Brown County trial court judge took a long time to wrestle with whether the criminal actions as reported in the Affidavit would or would not be 'medical', but eventually caved-in to the imposing teams of lawyers insisting that the definition of 'medical' only required that a doctor (or other licensed medical practitioner) was involved, even though the defining law, as stated, says there are two conditions to be met in order to be 'medical'. The case at Brown County's Common Pleas Court was dismissed, "not on the merits" on October 24, 2011 nearly three months after the hearing on July 27th 2011 in which the issues of Pro Se and 'medical' were both first presented by one of the teams of opposition lawyers for the Defendants-Appellees. The Pro Se idea was not any concern in the Trial Court in Common Pleas in Brown County Ohio, based on the Magistrate's commentary favoring the inconsequentiality of the Pro Se worry and focussing only on the criminality vs medical puzzling.

This deciding and pivotal issue of whether the 'medical' definition was adequately satisfied, was the basis intended to be challenged at the Appeal Court but was never given consideration. In contrast, the issue of Pro Se, not being adequate, had been not even revered in Brown County's trial court enough to receive more attention than for the Magistrate to ask these Plaintiffs-nowAppellants if we wanted to continue without outside representation and then said Magistrate was satisfied when these Plaintiffs declined said option. The only factor that was struggled with in Brown County's trial court was the over-simplified definition of 'medical' being insisted on by the Defendants-Appellees' teams of lawyers only so that they could claim Civ.R. 10(D)(2) was not contained in these Plaintiffs-Appellants Affidavit as it would not have been, and should not have been, in a criminal case thus filed as criminal and claimed as criminal by these Plaintiffs-Appellants.

Hence the Appellees' current Supreme Court Memorandum's sleight of hand 'fact'– that this was

a medical case – now here in the Supreme Court, schemingly slipped into the discussion of Jurisdiction as a 'fact' in the Sabir/Beck Defendants' Memorandum needs to be excised as an annoying cheap shellgame imposition on this jurisdiction consideration. The 'medical' designation was not able to be considered in the Appeal Court – as it was expected to be and would have been thought to have been settled – but never was heard for thoughtful, in depth consideration, because the Sabir/Beck Attorneys escaped that challenge by invalidly imposing a case law conclusion from an invalidly applied *Williams v. Griffith* Case whose other prior-conditional circumstances did not exist in the case *sub judice*.

Now leaving behind the annoying scheming shellgame, we shall return to the titled purpose of this our "Procedural Background" discussion at the point of the Appeal Court case that was filed on November 7th 2011 and was derailed by the anti-Pro-Se arguing as well as by the strangely adopted Cinderella dismissal that ignored the logic flaws in the Case Law arguing by the Defendants-Appellees' attorneys. Apparently the Appeal Court was anxious to deny a hearing on the definition issues brought before it by these Plaintiffs-Appellants, we would have to suppose, because the Appellate Court's Judges thereby also escaped the job of considering the frozenly likely idea that this magical Appeal was possibly raising an issue – the over-simplification of 'medical' being widely and wrongly perpetrated -- that would overturn and alter some current cookie-cutter thinking by lawyers in the Courts of Ohio.

The current cookie-cutter thinking uses that over-simplified definition to allow lawyers to authorize protective privileges for MDs so that those lawyers are able to engage in a game of 1) either dismissing or stonewalling all comers who can't afford the $100,000 price of the game on their own or have missed a trick, or 2) if that fails, then just hire a few disparaging medical experts-for-hire who will entertain the courts and juries with entangling verbiage until Justice is thoroughly mocked in the resulting avoidance of basic factors of criminal behavior, thus befuddling courts and jurors til their judgments are based on some indecipherable factors instead of forensic fact-finding and logic requiring creative intelligence and diligent persistence, as seen in statistical analyses of such cases reported as

failing justice for victims in the medical journal New England Journal of Medicine and Science News..

On January 13, 2012, the Court of Appeals issued an Order apparently denying the Defendant's motion to dismiss and unrealistically instructing the Plaintiff-Appellant to obtain legal representation for the 'Estate of E. Michael Raichyk', before being allowed to proceed, further ignoring that such 'estate' entity was of no consequence and had no involvement. On March 21, 2012, the Court of Appeals dismissed the Plaintiff's appeal for the 'failure to obtain legal representation for the Estate of E. Michael Raichyk', ignoring the evidence provided in memoradums that such requirement was not doable and certainly not for the criminal M. Swango, MD type case. This Supreme Court appeal followed in order to establish that the full group of next of kin, being all adults with ability to stand Pro Se, were entitled to do so individually and to represent the Decedent as validly as he would have done, with no chance of divided loyalties among the kin and no inability to take responsibility for their own such actions as are required for standing Pro Se, as these Plaintiffs-Appellants are demonstrating as basically "amenable to the general discipline of the court." in contrast to the ancient opinion from 25 years prior to the beginning of the internet as gleefully incorrectly cited by the lawyers for the Defendants-Appellees in *Union Sav. Assn. v. Home Owners Aid, Inc.*, 23 Ohio St. 2d 60, 64, 262 N.E.2d 558 (1970).

## II. LEGAL ARGUMENT

A. **The Court should strike the Memorandum of the Sabir/Beck lawyers opposing jurisdiction in this Supreme Court appeal because the foundation of their argument is based on Case Law examples that do not match the conditions of the case *sub judice* and hence their arguing conclusion from that case law on the unauthorized practice of law does not validly apply to the case *sub judice*.**

Section 2(B)(1)(g), Article IV of the Ohio Constitution certainly grants the Supreme Court of Ohio the power to regulate and control all matters related to the practice of law in this State. And

further R.C. 4705.01 provides, in pertinent part:

> No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding **in which the person is not a party concerned**, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. [Emphasis added]

The meaning of 'Pro Se' does not extend to representing others, and contrary to the claims about the identity of the Plaintiffs in the Defendants-Appellees' lawyers, there are no 'others' being represented. Instead of dealing with the reality of the Plaintiffs' identities, the lawyers prefer to dazzle the court with quotes and to order conclusions from their chosen case law, first and foremost the *Williams v. Griffith* case. However, the case of *Williams v. Griffith,* as brought to this discussion by the Memorandum of the Beck/Sabir lawyers, is nowhere near 'directly on point' with this case, as claimed. Exactly the opposite.

Unlike in *Williams,* the here Plaintiffs – plural – in this case *sub judice* are here standing on their own behalf as next of kin of the Decedent but also in support of the Decedent's grievance and one of those persons is the Personal Representative of the Decedent as required by law, all of whom are standing to demand justice in support of the Decedent's claim of having been assaulted – as described in the Affidavit of that Personal Representative. There are no 'other' next of kin that'd have interests possibly not represented by these next of kin standing in the Court. All of these Plaintiffs are able to perform as persons capable of taking responsibility for their own choices in the action and negotiations. None of the kin in the case *sub judice* are children as was the case in *Williams'* next of kin. Nor was the Williams, the person, personally able to claim that he was the entire group of the next of kin, there were 'others' not standing. All of which makes the use of that *Williams* Case Law concept inappropriate to draw any conclusions from the *Williams* case decision as valid to this case *sub judice*. Hence no conclusion on the issue of these Plaintiffs having perpetrated some 'unauthorized practice of law' can

stand as was claimed by these attorneys and hence the attorneys' Memorandum should be stricken..

In the second attempt by the Sabir/Beck attorneys, the basic argument starts from the Law itself. Ohio Revised Code 4705.01 prohibits a non-attorney from representing another in any action or proceeding in which the person is not a party. However it is clear that the context of the case *sub judice* is not done on behalf of an 'estate' and 'others among that estate's beneficiaries'. Instead the suit is brought by 'parties concerned' and all self-ignited in intent. Hence the action is thus properly pursued by these parties and not excluded as the attorney demands – invalidly – and hence that attorney's argument should be stricken also..

In the third and final -- and abbreviated -- claim, the attorneys again return to Case Law and again grossly err in the same issue as their first attempt. The attorneys' claims that the pleadings, and subsequent appeal, *sub judice*, are a nullity is based on their referenced but unexplored *Heath v. Teich,* 10th Dist. No. 06 AP 1018, 2007 Ohio 2529. Exactly like in *Williams,* the Heath next of kin were not all standing, and further there was among those next of kin, child-age members who would have been unable to make a performance Pro Se. Specifically, in **{¶ 4}**

> "In her memorandum in opposition to the motion to dismiss, appellant argues that the only beneficiaries of the Estate of Stephanie Kramer are appellant's other two children,..."

As a result, the Defendants-Appellee's final argument should be also stricken as not venerably appropriate logical Case Law based conclusions.

Lastly – in Part B of the Defendants-Appellants' lawyers' "Legal Argument" segment -- the Defendants-Appellees' Sabir/Beck's lawyers argue over the issue of whether the Court should consider the Plaintiffs-Appellants' case to be of sufficient public or great general interest. The basis of their assessment of such 'interest' is the claim that this case is -- in their view -- "the desire for an individual to engage in the unauthorized practice of law by representing the estate of a decedent". Since their

assessment of the case *sub judice* is fallacious, then it does follow that their assessment of a basis of interest is going to be without justification possibility. Hence these Plaintiffs-Appellants shall deny the Defendants-Appellees' judgment of possible public interest is consequently of merit.

If however, the Court wishes to evaluate the claimed merits of having a lawyer to represent these Plaintiffs-Appellants based on the application of the Defendants-Appellants' lawyers' case law quoted as:

> This Court restricts the practice of law to licensed practitioners as a means to "protect the p ublic against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Bar Assn. v. Comp Management, Inc.*, 104 Ohio St. 3d 168, 2004 Ohio 6506, 818 N.E.2d 1181, P40.

Considering that said current Defendants-Appellees' lawyers have struck out three times in three tries to make a logical argument of previous case and/or statutory law, it would seem to contradict the favoring of having a lawyer in order to avoid "incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation".

Furthermore, unlike what the Defendants-Appellees' lawyer says in her last sentence before her conclusion, that the Plaintiffs-Appellants claim, the actual complaint by these Plaintiffs-Appellants was not that the purpose was to 'create a disservice to the public' in requiring these Plaintiffs-Appellants to enlist a lawyer, the actual complaint was that the result was a Cinderella disservice.

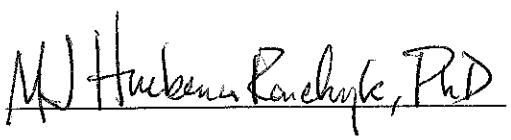
As such disservices further increase under current trends, there is definitely considerable public or great general interest such that the Court should exercise jurisdiction over this appeal. Particularly since the supply of lawyers able to support personal injury as well as wrongful death and malpractice for MDs will not be increasing to meet the steep increases already showing up in the demand trends. Law schools are being judged as not economically sustainable for their law students who now graduate with deep unsustainable debts on average to the extent that the only group of graduates now survivably reaching servicing in the law profession are the Corporate Law students, according to the analysis of

Brian Z Tamanaha, JD, JSD, Professor of Law at Washington University St Louis Law School. Hence the need for Pro Se is definitely becoming vital to the Court system which now depends on a token presence of good lawyers..

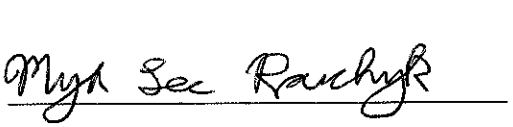
## III. CONCLUSION

As stated above, under Ohio law the arguments of the attorneys for the Sabir/Beck Defendants-Appellees should be taken as justifiably strikable and thoroughly unable to stand as valid arguing in this court. For this reason, Plaintiffs-Appellants respectfully requests that Court decline to further entertain the Defendants-Appellees' Memorandum with its unidentifiable Motion to Strike and instead exercise jurisdiction in the issue before this Court as presented by these Plaintiffs-Appellants.

Respectfully submitted,



Mary J Huebener Raichyk, PhD



Mya Lee Raichyk

Mary J. Raichyk, Mya Lee Raichyk, and as Personal Representative of E. Michael Raichyk comes his mother MJ Raichyk, each Pro Se
1563 Kress Road
Mt. Orab. OH 45154
(513) 278-3995
*Plaintiff-Appellants*

## CERTIFICATE OF SERVICE

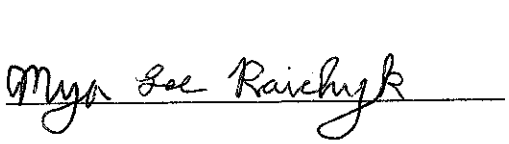
I hereby certify that a true and correct copy of the foregoing was sent this 11th day of June, 2012 to the following law offices by email as has been agreeable in the past:

Karen A. Carroll
Rendigs, Fry, Kiely & Dennis, LLP
One West Fourth Street, Suite 900
Cincinnati, OH 45202
at: **kcarroll@rendigs.com**
**jpratt@rendigs.com**
*Attorney for Defendant-Appellees, Mercy Hospital Clermont, Gayle Heintzlemann, and Donna L. Proctor, R.N., and Melody A. Hamilton, R.N. For their roles*

Michael F. Lyon
Laurie A. McCluskey
Bradley D. McPeek
Lindhorst & Dreidame
312 Walnut Street, Suite 3100
Cincinnati, OH 45202
at: **mlyon@lindhorstlaw.com**
**bmcpeek@lindhorstlaw.com**
*Attorney for Defendant-Appellee **A.X. Bhaskar,** M.D.*

Judd R. Uhl (0071370)
Katherine L. Kennedy (0079566)
MANNION & GRAY CO., L.P.A.
909 Wright's Summit Pkwy, Suite 230
Ft. Wright, KY 41011
Phone: 859-663-9830 Facsimile: 859-663-9829
at: **juhl@manniongray.com**
**kkennedy@manniongray.com**
*Attorneys for Defendant-Appellees, **Shabbir Sabir,** M.D. and **David C. Beck**, M.D.*

Mary J Huebener Raichyk, PhD



Mya Lee Raichyk

Mary J. Raichyk, Mya Lee Raichyk, and as Personal Representative of E. Michael Raichyk comes his mother MJ Raichyk, each Pro Se
1563 Kress Road
Mt. Orab. OH 45154
(513) 278-3995
*Plaintiff-Appellants*