

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2017-CP-10-2758

JEANE WHITFIELD,
Plaintiff,

vs.

DENNIS K. SCHIMPF, M.D. and
SWEETGRASS PLASTIC SURGERY,
LLC

Defendants.

**ORDER GRANTING NON-PARTY
O'NEILL PLASTIC SURGERY'S
MOTION TO COMPEL
COMPENSATION**

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SC Court of Appeals

This matter came before the Court on October 28, 2019 at 2:30 p.m. on Non-Party O'Neill Plastic Surgery's (hereinafter "O' Neill" and/or "Dr. O'Neill") Motion to Compel Compensation. After hearing arguments from counsel and considering the written materials, the Court hereby grants the Motion to Compel Compensation and orders Plaintiff to pay Dr. O'Neill \$1,436.90 pursuant to S.C. Code §44-115-80(A)(2) and Rule 26(b)(4)(C) of the South Carolina Rules of Civil Procedure, as detailed herein.

The Court wishes to provide a brief history of this case and of Dr. O'Neill's involvement. This is a medical malpractice case involving allegations by Plaintiff that Defendants breached the standard of care during a certain medical procedure performed on Plaintiff in 2014. This action was tried before a jury the week of August 26, 2019 with Judge Bentley Price presiding. The jury returned a defense verdict on August 30, 2019. There were no allegations of wrongdoing against Dr. O'Neill, and Plaintiff was never a patient of Dr O'Neill. However, as detailed in Dr. O'Neill's Motion to Compel Compensation, the Plaintiff and her counsel expended much time and effort in seeking

information from Dr. O'Neill. Defendants shared office space with O'Neill for a short time in 2014, during a time when Plaintiff was a patient of Defendants, and Defendants stored at least some of its own practice's medical records and other documents on O'Neill's computer system. Plaintiff asserted that certain medical records and pre-operative photographs of Plaintiff were missing and could not be located. According to Plaintiff, pre-operative photographs of her were taken and presumably were in existence at least at one point in time. The Plaintiff represented that she had no photographs of her condition before the malpractice complained of, and desired to show the jury photographs of her condition before the events complained of in the lawsuit.

Based on my review of this case, it is evident that Dr. O'Neill is entitled to reasonable compensation as follows:

(1) \$236.90 pursuant to his search for and production of the medical records provided in response to Plaintiff's subpoena dated October 19, 2015 and those produced at the time of his deposition on December 17, 2018. This amount was calculated pursuant to S.C. Code §44-115-80(A)(2).¹

(2) \$1,200² pursuant to Rule 26(b)(4)(C) of the South Carolina Rules of Civil Procedure for Dr. O'Neill's appearance at the *de bene esse* deposition scheduled for August 20, 2019 at 6:00 p.m. at the office of counsel for Plaintiff. Dr. O'Neill spent two hours traveling to and appearing for the deposition. The deposition was initially delayed

¹ 26 pages produced in response to October 19, 2015 subpoena (26 X .65 cents = \$16.90); 331 pages produced at the December 17, 2018 deposition. (.65 cents X 30 pages + .50 cents X 301 pages = \$170). Additionally, Dr. O'Neill is entitled to two separate \$25 search and handling fees in the total amount of \$50.

² Dr. O'Neill is plastic surgeon whose time is certainly valuable. He provided the Court with his pre-determined hourly rates for medical-legal work as evidenced by the Attorney and Paralegal Policies and Fees scheduled included as Exhibit 1 to the Motion to Compel Compensation. His hourly rate for depositions is \$600 per hour.

because a court reporter was not present. While waiting for the court reporter, the parties ultimately agreed upon the execution of an affidavit in lieu of proceeding with the deposition. However, Dr. O'Neill had already appeared pursuant to Plaintiff's deposition notice and is entitled to be compensated as if he were deposed. While Dr. O'Neill was initially made available as a records custodian for his discovery deposition, for which he was provided a witness fee check in the amount of \$32.85, Dr. O'Neill was then effectively utilized as an "expert" for the Plaintiff through his subsequent involvement, including the scheduled *de bene esse* deposition. Plaintiff required Dr. O'Neill for his expertise as a plastic surgeon in identifying whether the pictures were of patient's that were not the Plaintiff, and whether the pictures even related to the relevant procedure. Dr O'Neill's involvement in the review process was paramount as the owner of his practice and a licensed medical professional, as he is charged with maintaining the privacy of his patients. From looking at the record in this case, it is apparent that Dr. O'Neill takes his patient's privacy concerns very seriously. Again, to the Court, this level of review and involvement goes above and beyond the work that could have been performed by a mere "records custodian."

The Court hereby GRANTS Dr. O'Neill's Motion for to Compel Compensation and orders Plaintiff to pay Dr. O'Neill, within 14 days of this order, the reasonable compensation for his time and efforts in the total amount of \$1,436.90.

The Honorable Bentley Price, Presiding Judge

November ____, 2019

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Jeane Whitfield VS Dennis K Schimpf Md , defendant, et al

Case Number: 2017CP1002758

Type: Order/Compel

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766