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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JEFFERSON RADIATION ONCOLOGY,
L.L.C.,

Plaintiff,

CIVIL ACTION NO.: 15-1399

vs.

SECTION: C

MAGISTRATE: 3

ADVANCED CARE SCRIPTS, INC.,

Defendant.

_____ /

VIDEO DEPOSITION OF STEVE LYNCH

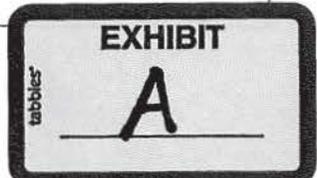
Taken on Behalf of the Plaintiff

DATE TAKEN: November 18, 2015

TIME: 9:02 a.m. - 3:17 p.m.

PLACE: Sclafani Williams Court Reporters
20 N. Orange Avenue, Suite 1108
Orlando, FL 32801

Stenographically Reported by:
Julie A. Watkins
Court Reporter



1 WestFax, correct, to provide you with the, the
2 appropriate language for opt-out?

3 A That's correct.

4 Q No one within the ACS organization?

5 A Correct.

6 Q And I also take it, then, that, that you
7 never had an opportunity to review the TCPA, the
8 actual law to determine whether or not you were in
9 compliance?

10 A That's correct.

11 Q Do you know whether or not anyone with ACS
12 reviewed the law at the time that you all were sending
13 these blast faxes out to see if you complied with the
14 law?

15 A I'm not aware of anyone.

16 Q You were in charge of the fact -- of setting
17 up the fax blast program, correct?

18 A Correct.

19 Q And so if anyone was reviewing the law
20 associated with the fax blast program, it would have
21 likely been you, correct?

22 A Correct.

23 Q All right. But you're not aware of having
24 looked at the law, nor are you aware of anyone else
25 having advised you as to what the law provided

1 concerning opt-out?

2 MR. EDWARDS: You mean anyone else at ACS?

3 MR. RECILE: Yeah, anyone else at ACS.

4 A No.

5 Q Are you aware of discussing the fax blast
6 program with any lawyers -- and I don't want to know
7 what they told you -- at any time prior to this
8 litigation starting?

9 A No.

10 Q Okay. So am I to understand that you did
11 not discuss the fax blast program and the requirements
12 with any lawyer prior to this -- the requirements of
13 the TCPA, prior to this litigation?

14 A I did not.

15 Q Do you know of anyone at ACS that discussed
16 the opt-out requirements with a lawyer prior to this
17 litigation?

18 A I'm not aware of that.

19 Q Let me show you another exhibit, Exhibit
20 Number 34, and I ask you to turn to page bate stamped
21 130. And you said that -- you see there, it only
22 provides for a phone number as well, it doesn't
23 provide for a fax number, correct?

24 A Again, I think that's a similar situation to
25 the other one where this might have been cut off.

1 that it should have included a fax number and a
2 telephone number as directed by WestFax?

3 MR. EDWARDS: Objection, calls for a legal
4 conclusion.

5 You can answer.

6 A My understanding all along, was that it
7 needs a phone and fax number.

8 Q Okay. And that if we assume that some went
9 out without a fax and a phone number, that they went
10 out at a time that you would have known that they
11 would have required both?

12 MR. EDWARDS: Objection, calls for legal
13 conclusion.

14 A If they did go out without, yes, it would
15 have been a time we would have known it should have
16 had both.

17 Q All right. Now, you indicated that -- well,
18 I mean, I'm curious. Have you ever read the TCPA at
19 all?

20 A I have not.

21 Q And you're not aware of anybody at, at ACS
22 that read the TCPA in connection with this fax blast
23 program?

24 A I'm not aware.

25 Q And, and prior to this litigation you didn't

1 consult with anybody concerning the TCPA?

2 A I did not.

3 MR. EDWARDS: Objection.

4 Q All right. So it's not a question of
5 whether you were confused as to what language was
6 required by the TCPA, it was because you never read
7 the language in the TCPA. Would that be, would that
8 be a correct statement?

9 MR. EDWARDS: Objection.

10 A Yes.

11 Q All right. Can't be confused about
12 something you didn't read.

13 A I have not read -- I did not read it, so I'm
14 not confused because of -- because I read it and was
15 confused.

16 Q And you can say that anybody at ACS was
17 confused about the language in the, in the TCPA,
18 because you don't know about whether anybody read it
19 or not, correct?

20 A Correct.

21 MR. EDWARDS: Objection.

22 Q And you didn't rely upon anyone else other
23 than WestFax to provide you with the opt-out language
24 that was required. Is that correct?

25 A That's correct.

1 Q So if we were to assume that the opt-out
2 language that went on your faxes was not in compliance
3 with the TCPA -- okay, and I'm asking you to assume
4 that. And I understand I'm not asking you for a legal
5 conclusion, but if we were to assume that you didn't
6 comply with the language -- and when I say "you," ACS,
7 okay, it would just be because of ignorance of the
8 law. Is that correct?

9 MR. EDWARDS: Objection.

10 A It would be of -- yes, it would be a
11 misunderstanding of the law, or not understanding the
12 law.

13 Q Well, when you say "a misunderstanding,"
14 can't be a misunderstanding because you didn't read
15 the law.

16 MR. EDWARDS: Objection.

17 Q So I, I don't want to mince words with you,
18 but I want to make sure we're clear on the record.
19 When you don't read the law you can't say that you
20 have a misunderstanding of the law. I'm asking you
21 whether or not it was you were confused by the letter
22 of the law because you read it, or whether or not you
23 just didn't know what the law required.

24 MR. EDWARDS: Object to the preface of the
25 question.

1 A I can answer it?

2 MR. EDWARDS: You can answer the question if
3 you understand it.

4 A I was confused by what I was told the law
5 was. I did not have an under -- I have not read the
6 law, so I cannot misinterpret the law.

7 Q Wait a minute, the only person who told you
8 what the law was was WestFax?

9 A Correct.

10 Q What did they tell you about the law that
11 confused you?

12 A All I know, from what WestFax told me, was
13 that we need to have a disclaimer on our faxes.

14 Q And they told you it required a fax number
15 and a telephone number?

16 A Correct.

17 Q But what is it about that that confused you?

18 MR. EDWARDS: Objection.

19 A The, the question -- the original question,
20 I believe, was did I have an understanding of the law,
21 and that's, that's not correct, because I, I have not
22 read the law.

23 Q Okay. So you didn't read the law so you
24 weren't confused with what the law provided. Is that
25 right?

1 MR. EDWARDS: Objection.

2 A I'm not confused about what the law provided
3 because I have not read it.

4 Q Okay.

5 A What I mean to say was that I'm -- the, the
6 limited information I had was from WestFax.
7 Obviously, there is a law, so I didn't know -- there's
8 a gap there, and that's what I didn't -- I don't
9 understand.

10 Q You, you didn't know it?

11 A I didn't know.

12 Q Okay. It's not a question of WestFax
13 telling you something and you didn't understand what
14 WestFax was telling you, you didn't know if WestFax
15 was telling you everything or not?

16 A Correct.

17 Q Is that correct?

18 A That's correct.

19 Q So basically if we assume that you did
20 not -- and I say again, you, ACS didn't comply with
21 the requirements of the TCPA as it relates to the
22 opt-out, it would be because you were ignorant to what
23 the law required. Is that correct?

24 MR. EDWARDS: Objection, calls for a legal
25 conclusion.

1 Q Subject to the objection, you can answer the
2 question.

3 A Can you repeat the question?

4 Q Sure. If we were to assume -- why don't you
5 read it back.

6 (The question was read by the reporter).

7 Q If we were to assume that ACS did not comply
8 with the requirements of the TCPA as it relates to the
9 opt-out provisions, would it be fair to say that the
10 reason why ACS did not comply was because they were
11 unaware of what the law provided, and not because they
12 were confused as to what the law provided?

13 MR. EDWARDS: Objection.

14 A We were not aware of what the law provided.

15 Q So basically, then, you're telling me that
16 the reason why you didn't comply -- if, in fact, it's
17 determine that you didn't comply -- was because of
18 ignorance of the law. Is that correct?

19 MR. EDWARDS: Objection, calls for a legal
20 conclusion, assumes facts.

21 A That is correct.

22 Q Did anyone at ACS, to your knowledge, ever
23 contact anyone with the FCC prior to this lawsuit
24 regarding the opt-out language to see what was
25 required?

1 A Not that I'm aware of.

2 Q You didn't, did you?

3 A I did not.

4 Q And you're not aware of anyone else. Is
5 that correct?

6 A FCC, no.

7 Q Federal --

8 A No.

9 Q -- Communications Commission?

10 A No.

11 Q All right. Now, there was a fax that was
12 sent out by Mr. Norton. Would he have used the
13 services of WestFax for that fax that we talked about?

14 A I believe so, yes.

15 Q All right. And that was the one that had
16 the, the additional language, remember that?

17 A The one from July, I believe you said.

18 Q Yes. And he would have sent that fax with
19 that additional language to WestFax, correct?

20 A I assume so.

21 Q Do you know if WestFax told him about that
22 additional language or not?

23 A I do not.

24 Q Is Mr. Norton still with ACS?

25 A He is.

1 provide the service. I did plan on rolling out
2 on-boarding next week, if that helps.

3 Q All right. Are you aware of any corporate
4 review of the -- the corporation's fax blast policy?

5 MR. EDWARDS: I'm going to instruct you not
6 to answer, to the extent that your knowledge
7 comes from communications with counsel. If you
8 have any other knowledge, you can provide it.

9 A I'm not, I'm not aware that there was --
10 that our policy was under corporate review.

11 MR. RECILE: All right. Is this a lunch
12 break time?

13 MR. EDWARDS: Sure.

14 MR. HOLLINGSWORTH: We're off the video
15 record at 12:47.

16 (WHEREUPON the proceedings were in a brief
17 recess).

18 MR. HOLLINGSWORTH: We're back on the video
19 record at 1:34.

20 BY MR. RECILE:

21 Q Mr. Lynch, I'm going to show you what is a
22 Federal Communications Commission order that was
23 released on October 30th, 2014, that addresses these
24 junk fax advertise -- what -- it addresses junk fax
25 advertisements and blast faxes. Okay?

1 A Okay.

2 Q Have you ever seen that before?

3 A I have not.

4 Q All right. So I take it that you've never
5 read it, no one's ever told you about it. Is that
6 correct?

7 A That's correct.

8 MR. EDWARDS: Wait, I'm going to instruct
9 you not to answer to the extent that you may have
10 had a conversation with counsel about it.

11 MR. RECILE: Well, he said nobody talked to
12 him about it, so I assume that that includes
13 counsel.

14 MR. EDWARDS: Well, I don't want him to
15 answer the question, whether it includes counsel
16 or not. You asked a compound question, to which
17 he answered no, so -- you said you've never seen
18 it and you've never talked to anybody about it --

19 Q Have you ever talked to anybody about it?

20 MR. EDWARDS: And I'll instruct you not to
21 answer to the extent that it involves
22 conversations with counsel. But you can answer
23 to whether you've talked to anybody else about
24 it.

25 A I have not.

1 Q All right. Have you spoken to anybody about
2 it prior to this litigation, including counsel?

3 MR. EDWARDS: Again, if --

4 Q Let me rephrase it. I don't want you to
5 tell me what counsel told you, I just want to know if
6 you've addressed this communication, this order with
7 anyone, including counsel, prior to this litigation.

8 A I have not.

9 Q Have you addressed any Federal
10 Communications Commission's orders concerning fax
11 blast advertisements with anyone prior to this
12 litigation?

13 A I have not.

14 Q So would it be fair to say that you're
15 unfamiliar with any of the Federal Communication
16 Commission's orders pertaining to fax blast
17 advertisements and the requirements concerning opt-out
18 language?

19 MR. EDWARDS: Let me just state, you can
20 answer in your personal capacity. This is a
21 topic as to which there was another witness
22 designated to testify on behalf of ACS. But you
23 can certainly answer in your personal capacity.

24 Q Go ahead and answer in your personal
25 capacity.

1 A I have not.

2 MR. RECILE: I'm somewhat confused by that
3 statement. Who is that other witness?

4 MR. EDWARDS: So maybe I -- let me modify
5 slightly what I said. So there was a --
6 Mr. Wilson was designated to talk about
7 communications with the Federal Communications
8 Commission --

9 MR. RECILE: Yeah, but I'm not asking about
10 communications.

11 MR. EDWARDS: Right. And then to the extent
12 you're asking about the evaluation of prior
13 orders of the Federal Communications Commission,
14 I'm not sure that is a 30(b)(6) topic. And
15 certainly, he's welcome to answer, and I think he
16 did answer your question, but I'm not sure what
17 category that would fall in.

18 MR. RECILE: I'm just, I'm just asking
19 him -- I think it pertains to the defenses raised
20 in this litigation, and that's covered in this
21 30(b)(6).

22 Q But subject to that, I'm going to ask you as
23 a representative of ACS, have you, you, personally, or
24 anyone, to your knowledge, with ACS reviewed any of
25 the Federal Commission -- Federal Communication

1 Commissions' orders pertaining to fax blast
2 advertising?

3 MR. EDWARDS: So object -- you can answer in
4 your personal capacity. I don't know that I
5 think that that fits within one of the categories
6 for 30(b)(6) --

7 MR. RECILE: Well, you made your objection,
8 but I'd, I'd ask that you not instruct him unless
9 you choose to not answer the question. I mean,
10 are you telling him he can't answer the question
11 as a representative of ACS?

12 MR. EDWARDS: Well, he can answer the
13 question based on what he knows.

14 MR. RECILE: Right, as a representative of
15 ACS.

16 MR. EDWARDS: Well, but I'm not agreeing
17 that he's doing so as a representative of ACS, I
18 don't think he can decide that legal question,
19 right, that's one between you and me.

20 MR. RECILE: Let me see if I got it, if I
21 got it straight. I'm asking him a question --
22 he's appearing today here as a representative of
23 ACS. I'm asking him a question as a
24 representative of ACS. You can make your
25 objection and it will be noted for the record,

1 but I need to know whether or not you're
2 instructing him not to answer the question as a
3 representative of ACS.

4 MR. EDWARDS: So --

5 MR. RECILE: Let me ask it again.

6 MR. EDWARDS: I don't, I don't -- I'm sure I
7 understand your question to me.

8 MR. RECILE: Let me ask the question and
9 then we'll go from there.

10 MR. EDWARDS: Okay.

11 Q As a representative of ACS, are you aware of
12 anyone who has either read, or is familiar with the
13 Federal Communications Commission's orders relative to
14 fax -- faxed advertising?

15 MR. EDWARDS: I object that it's beyond the
16 scope. You can answer to the extent that you
17 know, excluding from your answer any
18 communications from counsel.

19 MR. RECILE: Right.

20 A I personally am not aware of any
21 communication, as, as myself.

22 Q All right. And personally --

23 A Personally, yes.

24 Q -- you have not read any of the Federal
25 Communications Commission's orders?

1 A Correct.

2 Q And you're not aware of a representative of
3 ACS or anyone else that's employed with ACS having
4 read them?

5 MR. EDWARDS: Object -- same objection as
6 before.

7 Q Is that correct?

8 MR. EDWARDS: So to the extent you can
9 answer without revealing discussions with
10 counsel, you can answer.

11 A The only understanding is what we, is what
12 we spoke up about.

13 Q How limited prior to the litigation?

14 A No, I'm not aware.

15 Q All right. Now, so ACS has no basis then,
16 to your knowledge, to allege that they were confused
17 about any prior Federal Communications Commission's
18 rulings or orders?

19 MR. EDWARDS: Objection.

20 Q Is that correct?

21 A I'm not sure I understand that question.

22 Q Well, if no one, to your knowledge, has
23 either read any of the orders, or is aware of any of
24 the orders, then would it be fair to say that no one
25 can say, to your knowledge, that they're confused

1 about the orders?

2 MR. EDWARDS: Objection. I assume you're
3 limiting it to the time period before the
4 lawsuit.

5 MR. RECILE: Yes.

6 A That, that would be accurate.

7 Q All right. Now, did you have permission
8 from ACS to send the fax blasts that you -- that were
9 sent out that -- by the company that are the subject
10 of this litigation.

11 A Permission from ACS or --

12 Q When I say "you," did, did you or any of the
13 people who sent out these fax blasts that were
14 employed by ACS have ACS's approval to do so?

15 A Yes.

16 Q So to the extent that anyone with ACS sent
17 out fax blasts, as we have discussed, they were done
18 within the scope of their authority as employees of
19 ACS?

20 MR. EDWARDS: Objection, calls for a legal
21 conclusion. You can answer it, to your
22 understanding.

23 A Can you repeat the question?

24 Q Sure. To the extent that the employees sent
25 out these fax blasts, they were done with the

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JEFFERSON RADIATION ONCOLOGY,
L.L.C.,

Plaintiff,

CIVIL ACTION NO.: 15-1399

vs.

SECTION: C

MAGISTRATE: 3

ADVANCED CARE SCRIPTS, INC.,

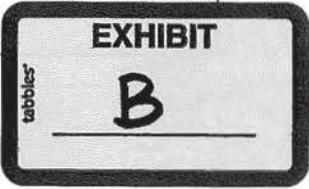
Defendant.

_____ /

VIDEO DEPOSITION OF DENNIS WILSON
Taken on Behalf of the Plaintiff

DATE TAKEN: November 17, 2015
TIME: 8:58 a.m. - 10:08 a.m.
PLACE: Sclafani Williams Court Reporters
20 N. Orange Avenue, Suite 1108
Orlando, FL 32801

Stenographically Reported by:
Julie A. Watkins
Court Reporter



1 APPEARANCES:

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21

22 Also Present:

23 Jamie Hollingsworth
24 Videographer

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1 Q Who would be in a position, if not you, as
2 office manager?

3 MR. VOELZ: Objection, misstates the
4 testimony.

5 A If there were anyone at ACS that would know,
6 it would be me.

7 Q All right. We have as item number 13 any
8 and all communications, written or verbal, to or from
9 the Federal Communications Commission within the last
10 10 years which in any way relates to the transmission
11 of faxes by the defendant to any person or entity.
12 This is an area that you have been identified as the
13 person best able to address. I'm aware of one that
14 was filed on Friday involving a request for waiver,
15 are you familiar with that request?

16 A I was informed of that.

17 Q Have you seen the application?

18 A I have not.

19 Q All right. Who informed you of that?

20 A The counsel.

21 Q All right. Was there any other
22 communication with the FCC prior to that request for a
23 waiver?

24 A Not to my knowledge.

25 Q In the last 10 years, are you familiar with

1 any -- you've only been there for five years. Within
2 the last five years, are you familiar with any
3 communication with the FCC as it relates to the
4 transmission of faxes?

5 A No, not to my knowledge.

6 Q All right. Or did you have an opportunity
7 to search your records within the last 10 years, the
8 five years preceding your employment with ACS, to
9 determine whether or not there was any communication
10 with the FCC concerning the transmission of faxes?

11 MR. VOELZ: Objection to form.

12 You can answer.

13 A Locally, the records were searched and no
14 record of anything. And my understanding is also at
15 corporate, there were records searched with no record
16 of anything.

17 Q Who is responsible for making sure that fax
18 transmissions comply with FCC rules and regulations?

19 MR. VOELZ: Objection, calls for legal
20 conclusion, beyond the scope.

21 MR. RECILE: I'm not asking for a person.
22 Who is responsible within the organization. It's
23 not asking for a legal conclusion.

24 Q But subject to the objection, I'm merely
25 asking who is the person that's charged with the

1 responsibility, if any, to make sure that fax
2 transmissions comply with FCC rules and regulations?

3 MR. VOELZ: Objection, beyond the scope.

4 A There's none, to my knowledge.

5 Q And the compliance department that was
6 referenced earlier, is it my understanding that
7 they're never asked to determine whether or not fax
8 transmissions comply with law, more specifically, the
9 TCPA, and the rules and regulations of the FCC
10 interpreting those statutes?

11 MR. DECKER: Objection to form, beyond the
12 scope.

13 A To my knowledge, that has not been presented
14 to them.

15 Q Okay. So before fax transmissions go out,
16 you're not aware of any effort that is made by ACS to
17 see whether or not the transmissions comply with the
18 TCPA and the rules and regulations interpreting the
19 TCPA as provided by the FCC?

20 MR. VOELZ: Objection to scope -- objection,
21 beyond the scope.

22 A To my knowledge, that was not done in the
23 past.

24 Q All right. Has it been done recently?

25 MR. VOELZ: Objection, beyond the scope.