

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to All Actions

**PRETRIAL ORDER NO. 32**

The Court's March 27, 2007 letter reserved the right to issue written rulings, as opposed to oral rulings, on topics raised in the parties' letter briefs. This Order addresses three topics raised in Plaintiffs' April 5, 2007 and April 19, 2007 letter briefs and in Guidant's April 16, 2007 letter brief. (*See* Doc. Nos. 1562, 1590 and 1604.) This Order also addresses Plaintiff Eugene Clasby's Motion for a Protective Order. (*See* Doc. No. 1602.)

**Independent Panel Transcript**

Guidant shall provide Plaintiffs with a copy of the transcript from the Independent Panel that is consistent with the Court's April 20, 2007 letter concerning the scope of Guidant's redactions pursuant to PTO No. 30 and with the representations Guidant made in its April 23, 2007 letter. Absent an agreement among the parties, Guidant shall produce a copy of the transcript no later than April 27, 2007.

**Expert Disclosures**

The Court assumes that the parties will be able to resolve this issue. The Court notes that no Guidant witness will be allowed to give expert opinions or conclusions that

are not contained in Guidant's Rule 26 disclosures. The Court reserves the right, however, to allow a witness to testify to issues not contained in Guidant's Rule 26 disclosures, depending on the subject matter discussed in a particular witness's deposition and the nature of the direct and cross-examination of the witness.

### **Dr. Maradie's Deposition**

Plaintiff Eugene Clasby's Motion for a Protective Order is **DENIED**. The Court rejects the notion that a plaintiff who alleges a claim for emotional distress or a similar type of injury automatically opens himself or herself up to a broad class of psychological discovery. There is no such automatic waiver of confidentiality or privilege; rather, whether such discovery and inquiry is warranted is determined on a case-by-case basis.

Here, in this case and consistent with PTO No. 14, the Court finds that Guidant is entitled to take the deposition of Dr. Maradie. Given the content of the medical records before the Court, there is a reasonable factual basis in the record that either Clasby has had more recent contact with Dr. Maradie or views his contacts with Dr. Maradie as significant. The deposition of Dr. Maradie is reasonably calculated to lead to the discovery of admissible evidence concerning at least one of Clasby's claims or defenses. Whether such testimony will be admissible at trial is not before the Court and will be decided at a later date.

**Dr. Myerberg's Deposition**

Plaintiffs shall be limited to the three areas of discovery described in their April 20, 2007 letter. They may not seek any documents or testimony about the Independent Panel's internal deliberations.

**IT IS SO ORDERED.**

Dated: April 24, 2007

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court