

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Civil Action No.: CL-2019-0002911

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL  
4:10 EXAMINATION OF PLAINTIFF JOHN C. DEPP, II

FILED UNDER SEAL

(Pursuant to the Stipulated Amended Protective Order entered by the  
Court on June 21, 2021)

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CIRCUIT COURT

FAIRFAX, VA

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*Counsel to Defendant Amber Laura Heard*

Defendant Amber Laura Heard, by counsel, hereby files this Memorandum in Support of her Motion to Compel a Rule 4:10 Medical Examination (“4:10 Exam”) of John C. Depp (“Motion”). As described in Ms. Heard’s Opposition to Mr. Depp’s Motion to Compel a 4:10 Exam, Ms. Heard is simply asking for fairness, and that both sides are treated equally. Both parties are in the same position in this litigation. They both have claims for defamation and both parties designated experts related to medical/mental health issues. Either neither side should be allowed a 4:10 Exam of the other party, or both sides should be allowed a 4:10 Exam under the same conditions, the particular conditions of which are detailed in Mr. Heard’s Motion to Compel a Rule 4:10 Medical Examination and Opposition to Depp’s Motion to Compel, which have been filed contemporaneously with this Motion.

### **ARGUMENT**

#### **I. Depp’s Medica and Mental Health Condition is in Controversy and Good Cause Exists to Grant Ms. Heard’s Motion for a Rule 4:10 Exam.**

Rule 4:10(a) of the Rules of the Supreme Court of Virginia provides that “[w]hen the mental or physical condition ...of a party...is in controversy, the court...upon motion of an adverse party, may order the party to submit to a physical or mental examination by one or more health care providers...employed by the moving party...on a motion for good cause shown.” Va. S. Ct. R. 4:10. Whether to award the examination “is in the sound judicial discretion of the court on the showing made.” *Virginia Linen Serv., Inc. v. Allen*, 198 Va. 700, 703 (1957). As Mr. Depp observes in his Motion for a 4:10 Exam of Ms. Heard, Courts have held that the rule “is to be construed liberally in favor of granting discovery.” *See, e.g., Eckman v. Univ. of Rhode Island*, 160 F.R.D. 431,433 (D.R.I. 1995).

Despite his pleas to the contrary, Mr. Depp has placed his medical and mental health at issue. Dr. David Kipper, whom Mr. Depp identified in his Expert Disclosures “has served as Mr.

Depp's treating physician for more than six years," **Ex. 1 at 21**, diagnosed Mr. Depp with Primary Dopamine Imbalance; ADHD, Bipolar 1, Depression, Insomnia, and chronic substance abuse disorder. **Ex. 2 at 3**. At Dr. Kipper's deposition, Mr. Depp's own counsel elicited from Dr. Kipper that he diagnosed Mr. Depp with these mental health issues and the effects of prescribed drugs on Mr. Depp, and that Dr. Kipper was qualified to make such diagnoses. **Ex. 3 at 170-78**. Dr. Kipper's testimony included how pharmaceuticals prescribed to Mr. Depp such as Adderall, Ambien, Lexapro, Lithium, Roxicodone, and Klonopin affected Mr. Depp's mood, depression, and anxiety and whether those drugs stabilized Mr. Depp's mood. *Id.* In Mr. Depp's Expert Disclosures, he stated "Dr. Kipper is expected to testify as to the pharmacological effects of the medications prescribed on Mr. Depp, as well as medical opinions reached during the course of Depp and Ms. Heard's treatment. In so doing, Dr. Kipper may rely on his expertise and experience as a medical doctor practicing internal medicine." **Ex. 1 at 21**. Therefore, Mr. Depp has squarely placed his medical and mental health conditions at issue in this case.

Mr. Depp is intending to use Dr. Kipper to testify about his medical and mental conditions, the effects of those medical and mental conditions, the reasons why Mr. Depp was placed on pharmaceuticals, and the effects of those pharmaceuticals, to justify Mr. Depp's actions, explain that those medical, mental conditions and pharmaceuticals somehow did not cause Mr. Depp to be angry and violent toward Ms. Heard, and that those mental disorders and the medications affect Mr. Depp's memory (or lack thereof) of the events that occurred with Ms. Heard. No one on behalf of Ms. Heard has been able to examine Mr. Depp, to verify or challenge Dr. Kipper's opinions, other than through a 4:10 Exam.

It would be entirely unfair for Mr. Depp to utilize Dr. Kipper in his case, not allow Ms. Heard to challenge Dr. Kipper's findings through a 4:10 Exam, while at the same time

ordering Ms. Heard to undergo a 4:10 Exam. Ms. Heard's ability to effectively dispute this expert testimony would be significantly prejudiced should she not be afforded an opportunity to conduct her own examination of Mr. Depp. Mr. Depp placed his medical and mental condition squarely in controversy when he designated Dr. Kipper as an expert on his medical and mental conditions. Ms. Heard should be entitled to explore (1) whether Mr. Depp in fact suffers from these medical and mental health conditions; (2) the possible causes and effects of such medical and mental health conditions; and (3) the effects of drugs and medication on Mr. Depp and his conditions – the very subjects on which Mr. Depp designated Dr. Kipper to testify. This type of examination is the same type of exam Mr. Depp is asking this Court to order of Ms. Heard. If Ms. Heard is ordered subject to a 4:10 Exam, so should Mr. Depp under the exact same conditions. Accordingly, good cause exists to grant Ms. Heard's Motion, and allow Dr. David Spiegel, Ms. Heard's chosen doctor, to conduct a 4:10 Exam of Mr. Depp.

Mr. Depp will no doubt argue, as he has already in his Motion for a 4:10 Exam of Ms. Heard, that Former Chief Judge White previously denied Ms. Heard's request for a 4:10 Exam. First, Judge White previously recognized that Mr. Depp's Complaint, alone, placed Mr. Depp's mental condition at issue, stating: "I think that the complaint is broad enough to place these things in issue, places [Depp's] mental condition in, issue, even though it may or may not really be an issue in this case, nevertheless it's put in the complaint for a purpose." **Ex. 5 at Tr. 26:15-18.** Since Judge White made this finding based on the allegations in Mr. Depp's Complaint, Mr. Depp has unquestionably confirmed that his mental condition is, in fact, at issue through his February 16, 2021 Designation/Identification of Expert Witnesses and Dr. Kipper's deposition testimony.

Second, at the time of the hearing, on November 15, 2019, Mr. Depp had not identified Dr. Kipper as an expert, and Former Chief Judge White found that Ms. Heard's request appeared to

be simply “an effort to have a medical assessment by an expert who would then be offered as a witness to testify as to the credibility of one of the parties.” **Ex. 4 at 27.** At that time, Mr. Depp had not disclosed Dr. Kipper and argued at the hearing that Dr. Kipper was only a fact witness. *Id.* at 20:14. That is now no longer the case, by Mr. Depp’s own making. Indeed, comparing Mr. Depp’s expert disclosures of November 4, 2019 (before the hearing with Former Chief Judge White) to his disclosures on February 16, 2021, reveals that Mr. Depp identified Dr. Kipper as an expert in his February 2021 disclosure and intends to adduce from Dr. Kipper Mr. Depp’s psychological disorders and the “effect of medications” on Mr. Depp and his medical and mental health conditions. Mr. Depp made a conscious choice to place his medical and mental health conditions at issue, and Ms. Heard should have the right to examine him through a Rule 4:10 examination, if the Court is requiring the same of Ms. Heard.

**II. Dr. Spiegel is Qualified to Conduct the 4:10 Exam.**

Rule 4:10(a) requires that the IME be conducted by a “health care provider” as defined in Va. Code § 8.01-581.1. Dr. Spiegel, who Ms. Heard requests conduct the 4:10 Exam, fits squarely within the definition and is appropriate to choose for this 4:10 Exam. Under Virginia law, the adverse party’s selection of a qualified health care provider is preferred because “[i]t is appropriate for the adverse party to have a physician of his own choice; this guarantees the equal opportunity to examine the medical condition in controversy[, and] [t]he examinee can always select his own medical expert.” Bryson § 9.09[2] (2019) (“Usually the physician named by the judge in his or her order is the one nominated by the moving party, and this is the preferred procedure.”) (citing cases).

Dr. Spiegel is a board-certified psychiatrist licensed by the Virginia Board of Medicine and in good standing. Dr. Spiegel has been continuously licensed in Virginia since 1993 and has more

than 25 years of experience in his field and as an active clinical practitioner. Dr. Spiegel completed his undergraduate degree at Duke University in 1985 and his medical degree at SUNY Downstate-Brooklyn in 1989. He completed his psychiatry internship at Dartmouth-Hitchcock Medical Center and his psychiatry residency at Penn State College of Medicine. Since 2013, Dr. Spiegel has been the Vice Chairman of the Department of Psychiatry and Behavioral Sciences at Eastern Virginia Medical School/Sentara Norfolk General Hospital and a Professor of Clinical Psychiatry there. Since 2004, Dr. Spiegel has been the Director of Consultation and Liaison Service at Eastern Virginia Medical School/Sentara Norfolk General Hospital. Dr. Spiegel has authored more than 60 publications and is a member of numerous professional organizations, including the Psychiatric Society of Virginia and the Medical Society of Virginia, and he is a Fellow of the American Psychiatric Association. Dr. Spiegel's Curriculum Vitae is attached hereto as **Exhibit 6**. Dr. Spiegel, therefore, is well-qualified to conduct the 4:10 Exam.

#### **CONCLUSION**

WHEREFORE, Ms. Heard respectfully requests that this Court grant her Motion and enter an Order requiring Mr. Depp to submit to a mental examination by David R. Spiegel, M.D. in the manner and time set forth specifically in her Motion.

Dated this 24th day of September 2021.

Respectfully submitted,

Amber L. Heard



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**CERTIFICATE OF SERVICE**

I certify that on this 24th day of September 2021, a copy of the foregoing was served by email, pursuant to the Agreed Order dated August 16, 2019, as follows:

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