

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

DO NO HARM, a nonprofit corporation  
incorporated in the State of Virginia,

Plaintiff,

v.

JEFF LANDRY, in his official capacity  
as Governor of Louisiana,

Defendant.

No.: 5:24-cv-00016-JE-MLH

**Judge Jerry Edwards Jr.**

**Mag. Judge Mark L. Hornsby**

**PLAINTIFF’S MOTION TO COMPEL DISCOVERY RESPONSES**

Plaintiff Do No Harm moves to compel Defendant Governor Landry to respond to Plaintiff’s written discovery. Specifically, and for the reasons set forth in the accompanying Memorandum in Support of Plaintiff’s Motion to Compel Discovery Responses, Plaintiff moves to compel Defendant to fully respond to Plaintiff’s First Set of Interrogatories to Defendant Nos. 7–10, 12–13 and to produce documents in response to Plaintiff’s First Set of Requests for Production of Documents Nos. 5–8, 10, 12. Plaintiff also requests an award of reasonable attorney’s fees and costs associated with this Motion.

DATED: August 9, 2024

Respectfully submitted,

/s/ James S. C. Baehr

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**CERTIFICATE OF CONFERENCE**

I hereby certify that the parties conferenced by telephone on August 8, 2024, but were unable to reach agreement on the issues disputed in this motion, necessitating Court intervention.

*/s/ Caleb R. Trotter* \_\_\_\_\_  
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### CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2024, I presented the foregoing document to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
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DO NO HARM, a nonprofit corporation incorporated in the State of Virginia,	}	No.: 5:24-cv-00016-JE-MLH
Plaintiff,	}	<b>Judge Jerry Edwards Jr.</b>
v.	}	<b>Mag. Judge Mark L. Hornsby</b>
JEFF LANDRY, in his official capacity as Governor of Louisiana,	}	
Defendant.	}	

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO  
COMPEL DISCOVERY RESPONSES**

Pursuant to Fed. R. Civ. P. 37(a), Plaintiff Do No Harm moves to compel Defendant Governor Landry to fully respond to Plaintiff’s First Set of Interrogatories to Defendant Nos. 7–10, 12–13 and to produce documents in response to Plaintiff’s First Set of Requests for Production of Documents Nos. 5–8, 10, 12. Plaintiff also requests an award of reasonable attorney’s fees and costs associated with this Motion. *See* Fed. R. Civ. P. 37(a)(5)(A).

**INTRODUCTION AND BACKGROUND**

This case concerns a Louisiana statute (La. Stat. § 37:1263(B)) that requires the Governor to discriminate on the basis of race when making appointments to the Louisiana Board of Medical Examiners. Plaintiff Do No Harm is an organization of over 6,000 medical professionals, students, and policymakers dedicated to eliminating racial discrimination in healthcare. Complaint, ECF 1 ¶ 3. Do No Harm has members who would qualify for seats on the Board as Louisiana physicians and

consumers but for their race. *See id.* Do No Harm challenges La. Stat. § 37:1263(B) as violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. ECF 1 ¶¶ 21–27.

Do No Harm filed its Complaint in this case on January 4, 2024. ECF 1. Defendant requested an extension to file his Answer by February 21, 2024, ECF 10, which was subsequently filed on February 28, 2024. ECF 12. Do No Harm then served Defendant with interrogatories and requests for production on March 29, 2024. *See* Ex. A–B. By rule, Defendant’s responses and production were due on **April 29, 2024**. *See* Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A). After multiple inquiries by Do No Harm’s counsel via email between April 30 and June 24, Defendant’s responses and production were served on June 25, 2024. At no time did Defendant request an extension from Do No Harm. Despite Defendant’s tardy response, Defendant still failed to fully respond to several interrogatories and to provide documents responsive to multiple requests for production. As of the filing of this motion and memorandum, Defendant has served no supplemental responses or documents—nor has Defendant provided a timeline for producing these materials. Under the Scheduling Order controlling this case, the deadline for written discovery and for the filing of motions to compel is August 11, 2024. ECF 17.

In response to Do No Harm’s Interrogatory No. 7, Defendant stated that “[t]his information will be provided once confirmed by the Louisiana Board of Medical Examiners.” Ex. A. Likewise, in response to Interrogatory Nos. 8–10, Defendant stated that “[t]his information will be provided upon receipt of the information from

the Louisiana Board of Medical Examiners.” *Id.* Nearly identical responses were given to Interrogatory Nos. 12–13. *Id.*

As a result of Defendant’s responses to Interrogatory Nos. 7–10, his responses to Do No Harm’s Request for Production Nos. 5–8 stated that Defendant has “[n]o[] [documents] at this time.” Ex. B. The same response was provided to Request No. 10 in reference to Interrogatory No. 12. *Id.* And Defendant’s response to Request No. 12 stated that “[t]his information/documents will be provided once received from the Louisiana Board of Medical Examiners.” *Id.*

### ARGUMENT

The scope of discovery is broad and includes the information in Do No Harm’s Interrogatories and related documents that Plaintiff seeks to obtain. Do No Harm may “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case ...” Fed. R. Civ. P. 26(b)(1); *see also Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 262 (5th Cir. 2011). The Federal Rules of Civil Procedure “promote broad discovery so that all relevant evidence is disclosed as early as possible ....” *Chiasson v. Zapata Gulf Marine Corp.*, 988 F.2d 513, 517 (5th Cir. 1993). District courts have “wide discretion in determining the scope and effect of discovery,” *Equal Employment Opportunity Comm’n v. BDO USA, LLP*, 876 F.3d 690, 698 (5th Cir. 2017) (citation omitted), and “control of discovery is committed to the sound discretion of the trial court ....” *Williamson v. U.S. Dep’t of Agric.*, 815 F.2d 368, 382 (5th Cir. 1987).

**I. Do No Harm is entitled to full responses and documents responsive to its discovery requests**

Defendant did not object to the relevance of Do No Harm's Interrogatory Nos. 7–10 and 12–13 or Requests for Production Nos. 5–8, 10, and 12. Indeed, Do No Harm's Interrogatories and Requests are highly relevant to the claim and expected defense in this case. Do No Harm contends that Defendant has no compelling interest in enforcing a race-based mandate for membership on the Board of Medical Examiners. ECF 1 ¶¶ 24–25. In response to Do No Harm's Interrogatory No. 4, Defendant contends that his interest in complying with the racial mandate of the challenged statute "is to ensure that all segments of the population with an interest in healthcare as it impacts that discrete segment have a voice in matters and decisions of the Board of Medical Examiners. The state judged that the health and welfare of its citizens would benefit thereby." Ex. A. The Interrogatories and Requests at issue here are important and relevant to Defendant's stated interest because they will identify the racial composition of the Board and applicants and thus illuminate how the challenged statute supposedly benefits "discrete segment[s]" of the population, as well as what those segments are. As the challenged statute's racial mandate requires a consideration of the race of Board members and applicants, Defendant should be able to articulate on what racial basis he is appointing members of the Board.

The threshold for relevance at the discovery stage is lower than at trial. *Utopia Ent. Inc. v. LaSalle Mgmt. Co. LLC*, No. CV-03-1355, 2005 WL 8156795, at \*2 (W.D. La. 2020). Relevance is "construed broadly to encompass any matter that bears on, or



that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Evidence that establishes the racial makeup of the Board of Medical Examiners is central to understanding the practical effects of the challenged statute. Simply, because the statute mandates the use of race, and because Defendant’s stated interest is keyed on race, information about the racial composition of the Board is relevant.

**II. Production of the requested information is proportional to the needs of this case**

Nor did Defendant object to the proportionality of Do No Harm’s Interrogatory Nos. 7–10 and 12–13 or Requests for Production Nos. 5–8, 10, and 12. Nor could he, as Do No Harm’s Interrogatories and Requests are proportionate to the needs of this case. To determine whether discovery is proportional, courts consider “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

Here, Do No Harm seeks a limited set of documents—those related to members of the Board of Medical Examiners and applicants for seats on the Board—that are tailored to the important issue of Do No Harm’s equal protection claim and Defendant’s anticipated defense. Do No Harm has no access to the requested information or documents. Do No Harm’s Interrogatories and Requests are not overly burdensome; they are concerned only with the current composition of the Board or time-limited back to the year that the challenged statute was enacted (2018). Rather

than objecting to providing full responses or the requested information, Defendant has simply delayed so long that Do No Harm must file this motion now in order to ensure it obtains the information prior to trial.

### **III. The Court should award Rule 37 attorney's fees**

Fed. R. Civ. P. 37(a)(5)(A) encourages the award of attorney's fees for a successful motion to compel, except in a limited set of circumstances. *See* Fed. R. Civ. P. 37(a)(5)(A) (fees and expenses "must" be awarded). None of those limited circumstances apply here. Counsel for both parties conferred in good faith but were unable to resolve this dispute without court action. Defendant's failure to fully respond to Do No Harm's Interrogatories and produce related documents—despite their importance to Plaintiff's equal protection claim and Defendant's likely defense—is not substantially justified as a response to a "genuine dispute," nor could "reasonable people ... differ as to the appropriateness of the contested action." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (internal quotations and brackets omitted). An award of attorney's fees under Rule 37 is justified in this case.

### **CONCLUSION**

For the foregoing reasons, this Court should grant Plaintiff's motion to compel full responses to Plaintiff's Interrogatory Nos. 7–10 and 12–13, the production of documents in response to Plaintiff's Requests for Production Nos. 5–8, 10, and 12, and award reasonable attorney's fees.

DATED: August 9, 2024

Respectfully submitted,

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