

File

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

RAPHAEL J. OSHEROFF, M.D.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 66024
	:	
CHESTNUT LODGE, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS TO COMPEL ANSWERS TO INTERROGATORIES

INTRODUCTION

Plaintiff, Raphael J. Osheroff, M.D., by counsel, hereby files the following opposition to the motions of the defendants to compel answers to interrogatories. As set forth in more detail below, defendants' motions are nothing more than harassment tactics and should be summarily denied. Defendants' counsel have failed to forthrightly comply with the rules of this Court prior to filing their unfounded motions. In addition, defendants' quibbles over plaintiff's responses to their interrogatories are without foundation; plaintiff has provided more than adequate responses to all relevant and proper interrogatories propounded by the defendants.

Adopting a blunderbuss approach, defendants' interrogatories seek such information as a description of every book, article or paper dealing with psychiatry that plaintiff has ever read, apparently from childhood through the present; the name of every physician who has ever examined or treated

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plaintiff; and the names of all persons with whom he had sexual relations over a three-year period. Not only are such interrogatory questions unreasonable, oppressive and insulting on their face, but many of the other interrogatories request information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the oppressive nature of defendants' interrogatories, plaintiff has submitted two substantial responses. The answers to the interrogatories of defendant Chestnut Lodge total 28 pages, while the answers to the interrogatories of defendants Ross and Dingman are 17 pages in length.

Further, it should be emphasized that defendants already have volumes of documents and testimony relevant to the questions they recently have propounded. This matter already has been through a full and complete health claims arbitration hearing in which interrogatories were served and answered, documents produced, depositions taken, and a full and complete hearing held before a three-member panel. This is not the typical legal proceeding in which the defendants may not already have full and complete information concerning the plaintiff's claim.

For example, Interrogatory #10 propounded by defendants Ross and Dingman requests an itemization of expenses made or incurred by the plaintiff, including hospital bills. During the course of the arbitration proceedings, the defendants were

supplied with information and documents detailing plaintiff's hospital and guardianship expenses. Defendants already have this information, and hence, their present interrogatory question can be viewed only as unnecessary and unduly burdensome.

I. Defendants Failed To Consult With Plaintiff's Counsel Prior To Filing Their Motions To Compel

To the extent that defendants have questions concerning plaintiff's answers to interrogatories, they had a duty, pursuant to Rule 2-431, to make good faith attempts to discuss the matter with plaintiff's counsel and attempt to informally resolve any dispute. The defendants utterly failed to make such a good faith attempt and, therefore, because of this procedural impediment, their present motions to compel should be denied.

In their joint Rule 2-431 Certificate, counsel for the defendants state that on August 19, 1986, they attempted to contact one of plaintiff's counsel, Jonathan R. Mook, an associate attorney in the law firm of Hirschkop & Associates, P.C. At that time, defendants' counsel were informed that Mr. Mook was on vacation until August 25, 1986. Defendants' counsel, however, made no attempt to contact any other attorneys representing plaintiff. In particular, defendants' counsel did not even ask to speak with Philip J. Hirschkop, lead counsel for plaintiff. Although Mr. Hirschkop was in the office on the day that defendants' counsel attempted to contact Mr. Mook, they apparently made no attempt to determine whether Mr. Hirschkop was available.

The failure of defendants to contact lead counsel in this matter prior to filing their motions to compel indicates more than a mere oversight; it would appear to be an effort to end-run the requirements of this Court that counsel attempt to resolve discovery questions on their own, without burdening the Court. Instead of making a good faith effort to resolve any discovery disputes, defendants' counsel, apparently as a harassment tactic, filed their present motions to compel. Plaintiff respectfully submits that such questionable behavior should not be countenanced by this Court and that defendants' motions to compel should be denied for failure to follow clear procedural requirements.

II. Plaintiff Has Reasonably Responded To Defendants' Interrogatories

Even if this Court were to deem it necessary to interject itself into discovery proceedings at this time, defendants' motions to compel should be denied in light of the fact that plaintiff has provided full and complete answers to all properly propounded interrogatories. Indeed, the objections raised by defendants to plaintiff's interrogatory answers emphasize the inappropriateness of many of the interrogatory questions they have propounded.

For example, Chestnut Lodge has objected to plaintiff's answer to the Lodge's Interrogatory #3 because plaintiff has failed to list, inter alia, the last known professional and residential addresses and telephone numbers of physicians with

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whom plaintiff previously has been associated. Plaintiff does not have any special access to information with regard to the addresses and telephone numbers of such former associates; plaintiff has not been associated with many of these individuals for over ten years. Plaintiff assumes that defendants' counsel has as ready access to the Northern Virginia telephone directory as does plaintiff. There is no requirement in the discovery rules that a party need undertake special research or investigation where the information may be compiled from sources equally accessible to the opposing party.

With regard to other interrogatory answers, the defendants, likewise, have objected because plaintiff has not supplied information to which defendants not only have equal but indeed more complete and better access. For example, defendants Ross and Dingman object to plaintiff's answer to their Interrogatory #1 because plaintiff allegedly has failed to identify the time and place of their acts and omissions. In his answer to Interrogatory #1, plaintiff identified in detail the acts and omissions by defendants Ross and Dingman which give rise to plaintiff's action. The precise dates and times, to the extent that they now can be identified, is likely to be found in the medical records and notes of the defendants themselves. The defendants are the ones who treated Dr. Osheroff in a manner which gave rise to his malpractice claim. Defendants Ross and Dingman, therefore, have particular access to information concerning their acts and omissions. For defendants to contend

that plaintiff's answers to interrogatories somehow are incomplete because he failed to supply information in the hands of the defendants simply is ludicrous.¹

In their motions to compel, defendants also are pressing for answers to questions that on their face are overbroad. In his answers to interrogatories, plaintiff has made a serious attempt to answer, within reasonable limits, these blanket interrogatory questions. However, the defendants, will not be satisfied.

In Interrogatory #14, for example, defendants Ross and Dingman have demanded that plaintiff supply them with the name, address and dates of examination of every physician who has ever examined or treated plaintiff, apparently from infancy. The mere statement of this interrogatory establishes its serious defects. Despite the fact that this interrogatory clearly is overbroad, plaintiff has made an attempt to answer it by providing information with respect to treatment by physicians for the last ten years. The defendants, however, will not be satisfied. Apparently, they believe it is relevant to know the name of the physician who examined Dr. Osheroff when he was four months old. Plaintiff respectfully submits that the defendants should be required to make a specific and detailed showing as to why the

¹Defendants Ross and Dingman raise a similar objection to plaintiff's answer to Interrogatory #20 requesting information concerning conversations plaintiff has had with the defendants. As pointed out in plaintiff's answer, the conversations should be reflected in the records of Chestnut Lodge currently in the possession of the defendants.

information they have requested could have any conceivable relevance to the proceedings in this case.²

Defendant Chestnut Lodge also would have plaintiff list each book, article, manuscript, etc. that he has ever read which refers to or discusses the psychiatric concepts and principles relating to issues in this case. Defendant has placed no limits whatever upon this patently overbroad question. Apparently, defendant Chestnut Lodge would have the plaintiff search the syllabus of courses taken during college and medical school, which would indicate readings in the field of psychiatry. What obvious import could be obtained by learning that plaintiff, while in medical school, had read a chapter from a medical textbook dealing with depression? Defendant Chestnut Lodge has failed to supply any rationale whatever to this overbroad, oppressive and irrelevant line of inquiry.

The fact that there was no reason for defendants to file their motions to compel is emphasized by their objections to interrogatories to which plaintiff already has supplied voluminous information and stated that it intends to supply additional material. For example, in response to Interrogatory #11 of defendants Ross and Dingman, requesting an itemization of

²Defendant Chestnut Lodge similarly has propounded obviously overbroad interrogatory questions. For example, in Interrogatory #10, Chestnut Lodge would have the plaintiff state the name of each and every anti-depressant or anti-psychotic medication that he has taken from his youth through the present. Again, the mere statement of this interrogatory establishes its overbreadth. Despite the overbroad character of the interrogatory, plaintiff has supplied defendant Chestnut Lodge with a description of those medications he has taken since 1979.

all of plaintiff's expenses incurred as a result of defendants' negligence, plaintiff previously has supplied the defendants with information and documents detailing his hospital and guardianship expenses. In addition, in answering this interrogatory, plaintiff stated that he was in the process of compiling further information concerning expenses and that this information will be provided to the defendants in a timely fashion prior to trial. The defendants, however, apparently are not content with plaintiff's statement that additional information will be submitted to the defendants. Defendants obviously are making a fight over nothing and are attempting to burden this Court with irrelevant motions and issues.³

Finally, and most disturbingly, defendants' attempt to skirt the procedural requirements for consultation prior to filing their instant motions to compel answers, coupled with the clearly overbroad and irrelevant interrogatories they have asked, raise serious questions concerning the motivation behind defendants' actions in this matter. Defendants' present motions

³In answering Chestnut Lodge's Interrogatory #14, dealing with plaintiff's economic and financial losses, plaintiff previously has supplied defendants with copies of his tax returns for the years 1977 through 1982. In responding to this interrogatory, plaintiff stated that he is in the process of compiling additional information and documents detailing his expenses. Again, apparently in an attempt to create a dispute where none exists, defendant Chestnut Lodge has based its motion to compel answers, in part, upon plaintiff's alleged failure to answer this interrogatory. Plaintiff, by no stretch of the imagination, has failed to answer defendant's Interrogatory #14. Not only has he previously supplied financial information, but he has stated that he is in the process of compiling additional information, which will be supplied to the defendants. What more can defendants legitimately request?

and their prior interrogatories appear to be nothing more than an attempt to harass and unduly burden the plaintiff.

The objective of harassment and intimidation is exemplified by Interrogatory #13 propounded by defendant Chestnut Lodge. In that interrogatory, the defendant has asked "the full name and last known address of all persons with whom you had sexual relations from January 1, 1977 through January 1, 1980, including, but not limited to, wives, former wives, fellow patients or staff members, and prostitutes." This interrogatory is such a blatant attempt to harass the plaintiff that plaintiff respectfully requests that it be summarily stricken.


CONCLUSION

Plaintiff respectfully submits that this Court should not allow the defendants to unduly burden it with disputes over overbroad and irrelevant interrogatories obviously propounded for purely harassment purposes. For this reason, and the other reasons set forth above, plaintiff requests that the motions of the defendants to compel answers to interrogatories be denied and that plaintiff be awarded its attorney fees for having to defend such obviously improper motions.

Respectfully submitted,

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By Counsel

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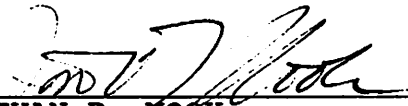
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Opposition to Defendants' Motions to Compel Answers to Interrogatories was mailed, first class, postage prepaid, this 9th day of September, 1986, to:

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