

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC,
et al.

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**Dr. Sam Ghoubrial's Memorandum in
Opposition to Plaintiffs' Motion to Compel
Discovery**

Consistent with the Civil Rules and the Summit County Local Rules, Defendant Ghoubrial timely responded to Plaintiff Monique Norris's First Combined Discovery Requests. Just because attorney Pattakos does not like the responses does not mean the responses were in any way incomplete or inappropriate. Contrary to attorney Pattakos' belief, just because he baselessly asserts something as fact does not make it true. Just because attorney Pattakos finds it "unbelievable" that Defendant Ghoubrial does not possess certain categories of documents responsive to his requests does not change the fact that Defendant Ghoubrial simply does not possess those categories of documents. No further affirmation from Defendant Ghoubrial or his counsel is necessary or required under the applicable rules. (See Plaintiffs' Motion to Compel at pg. 3).

Plaintiffs' Motion to Compel Discovery from Defendant Sam Ghoubrial, M.D. ("Plaintiffs' Motion") is just the latest in a long line of filings by Plaintiffs that clearly shows attorney Pattakos believes the Rules of Civil Procedure, the Rules of Evidence and the Local Rules apply to everyone involved in this action except him. Once again, Plaintiffs' Motion is rife with false accusations, meritless assertions and outright falsehoods. Once again attorney Pattakos cites ZERO Ohio law in support of his baseless contentions. Because Plaintiffs' Motion is nothing more than a shameless attempt to further delay the deadline for class certification, Plaintiffs' Motion must be denied.

Attorney Pattakos' assertion that Defendant Ghoumbrial "failed to respond substantively to a single one of Plaintiffs' Interrogatories" is categorically false. (Plaintiffs' Motion at pg. 3). One need only read Defendant Ghoumbrial's response to Interrogatory No. 1 to see a complete substantive response to that Interrogatory included after the properly asserted objection. (See Exhibit "1" attached to Plaintiffs' Motion). Interrogatory No. 1 asked Dr. Ghoumbrial to:

Identify all agreements and/or arrangements, written or otherwise, formal or informal, regarding, relating to, or involving referrals of clients and/or patients between you and KNR including by identifying the terms of each agreement.

Dr. Ghoumbrial properly responded to Interrogatory No. 1 as follows:

Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence, it contains vague and undefined terms, and it is not related to class certification, nor does the information sought "overlap" with any issues related to class certification. **Further answering, and without waiving said objections, there are no "agreements" or "arraignments, written or otherwise, formal or informal" regarding referrals of patients between Defendant and KNR.** (Emphasis added). *See Id.*

Again, the fact attorney Pattakos is upset Defendant Ghoumbrial's response does not correspond to Pattakos' own false narrative and unsupported beliefs does not render the response insufficient or inappropriate. Defendant Ghoumbrial responded to Plaintiff Norris's Interrogatories to the best of his ability considering the breadth and general vagueness of the Interrogatories. A cursory review of the discovery requests propounded on behalf of Plaintiff Norris by attorney Pattakos demonstrates the utter inappropriateness of the requests. Attorney Pattakos is seeking information on literally thousands of patients over many years, even though those patients are not parties to this action, and with no regard for patient confidentiality, Dr. Ghoumbrial's obligations under HIPAA and related laws and regulations, and/or the undue burden created by the unlimited scope of the requests. Moreover, the vast majority of the requests are in no way even arguably

related to the claims asserted against Dr. Ghoumbrial in the Fifth Amended Complaint, to issues of class certification, or to issues that arguably overlap with class certification.

Attorney Pattakos complains Dr. Ghoumbrial only provided responses to the first 40 of the 47 Interrogatories originally propounded on behalf of Plaintiff Norris. (See Plaintiffs' Motion at pg. 3, Footnote 1). Attorney Pattakos suggests because he sent an email after the responses were produced stating Dr. Ghoumbrial could consider the extra Interrogatories as having been propounded by Plaintiff Harbour, Dr. Ghoumbrial has no right not to respond to those Interrogatories. In typical fashion, attorney Pattakos' argument ignores both the facts and the applicable Rules. The undisputed fact is that the discovery requests at issue came *only* from Plaintiff Monique Norris. (See Exhibit "1" attached to Plaintiffs' Motion). While attorney Pattakos was and is certainly free to propound discovery requests on behalf of Plaintiff Harbour, it is undisputed he has never done so. In addition, attorney Pattakos ignores both the Civil Rules and the Summit County Local Rules. And he ignores the fact Dr. Ghoumbrial answered the first 40 Interrogatories consistent with Civil Rule 33(A)(3) when Local Rule 17.01 only permits 35 Interrogatories without leave of court.¹ As stated, attorney Pattakos consistently ignores and violates rules as he sees fit yet constantly complains that others are not playing fair. Attorney Pattakos and his clients cannot have it both ways.

As it relates to Plaintiff Norris's document requests, Dr. Ghoumbrial produced everything in his possession that was requested and was not protected by privilege. That attorney Pattakos simply believes Dr. Ghoumbrial should or must possess more does not make it so. Dr. Ghoumbrial and his counsel understand their obligations relative to discovery and they have complied in good faith. Quite simply, Dr. Ghoumbrial cannot produce documents that he does not have or that do not exist.

¹ Attorney Pattakos consistently has violated Local Rule 17.01 by sending second and third sets of Interrogatories to all defendants without seeking and receiving leave of court after demonstrating good cause therefore.

Attorney Pattakos seems to believe that Dr. Ghoumbrial has separate and distinct policies and procedures in place for the treatment of KNR clients. As indicated in Dr. Ghoumbrial's response, attorney Pattakos is wrong. No separate and distinct policies or procedures exist.

As with the subject Interrogatories and Requests for Production, Dr. Ghoumbrial's responses to Plaintiff Norris's Requests for Admission were complete and proper. This is true despite the fact that many of the Requests to Admit assumed facts not in evidence and/or requested that Dr. Ghoumbrial admit unsupported legal conclusions of Plaintiffs' counsel. Dr. Ghoumbrial's objections to Plaintiff Norris's Requests for Admission were proper and complied with Civil Rule 36(A)(2) in every respect.² Despite attorney Pattakos' suggestion to the contrary, Dr. Ghoumbrial only responded "Deny as written" to two of Plaintiff's Requests. (See Exhibit "1" attached to Plaintiffs' Motion, Requests 6 & 7). The responses to those two Requests were wholly appropriate considering the Requests improperly assume Dr. Ghoumbrial had some duty to disclose certain information regarding medical treatment or device pricing to his patients. However, and as attorney Pattakos is no doubt aware, no such duty exists. The assumption that a treating physician had a duty to disclose the associated costs of treatments provided to patients is patently absurd. A review of Dr. Ghoumbrial's responses to Plaintiff Norris's Requests for Admission demonstrates his response was complete and appropriate, as were his objections.

Finally, Plaintiffs' request for an order from this Court directing Dr. Ghoumbrial to produce a copy of his wife, Julie Ghoumbrial's, deposition transcript from their unrelated divorce proceeding is

² Attorney Pattakos cannot propound Requests for Admission akin to "Admit you recently stopped beating your wife" and then cry foul when he gets a response other than an unqualified admission or denial.

inappropriate, unprofessional and offensive. Not only is attorney Pattakos once again making himself a necessary witness in this action by inappropriately representing to the Court what he believe the evidence and testimony to be, he once again ignores critical facts fatal to his request. First and foremost, the transcript has not been transcribed, and neither Dr. Ghoumbrial nor his counsel have a copy of the deposition transcript. Second, if it were transcribed, the deposition involves highly personal and private information re: Dr. Ghoumbrial, his wife, his children, and his marriage. Moreover, even if the deposition transcript was transcribed, which it is not, Plaintiffs would be able to purchase a copy directly from the court-reporter, assuming the orders in place in the divorce proceeding would permit it, which they likely would not. In any event, Dr. Ghoumbrial cannot produce a transcript that does not exist. As such, Plaintiff's request for order to produce the nonexistent transcript is a nullity.

Dr. Ghoumbrial's responses to Plaintiff Norris's discovery requests were proper, as were his objections. Dr. Ghoumbrial responded to all to the best of his ability and in good faith. Attorney Pattakos' unsupported assertions and beliefs do not change that fact. Dr. Ghoumbrial cannot produce what he does not have and he is not required to provide only the responses Plaintiffs and their counsel wish to receive. Unlike Plaintiff and their counsel, Dr. Ghoumbrial complied with the Civil and Local Rules and he will continue to do so. One need only read the discovery propounded by Plaintiff Norris and Dr. Ghoumbrial's responses and objections thereto to see that Plaintiffs' Motion to Compel lacks merit and should be denied.

Accordingly, Defendant Sam Ghoubril, M.D. respectfully requests that Plaintiff Monique Norris's Motion to Compel be denied.

Respectfully Submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

LEWIS BRISBOIS BISGAARD & SMITH LLP

1375 East 9th Street, Suite 2250

Cleveland, Ohio 44114

Phone: 216-344-9422

Fax: 216-344-9421

Brad.Barmen@lewisbrisbois.com

Counsel for Defendant

Dr. Sam Ghoubril

CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s Memorandum in Opposition to Plaintiffs' Motion to Compel Discovery has been filed on the 7th day of January, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen
Bradley J. Barmen (0076515)

*Counsel for Defendant
Sam N. Ghoubrial, M.D.*