IN THE COURT OF COMMON PLEAS

**CUYAHOGA COUNTY, OHIO**

CHRISTINE VILLANUEVA, ) CASE NO.: CV-13-801801

)

Plaintiff, ) JUDGE DEENA CALABRESE

v. )

)

JOHN F. FLEEGLE ) **PLAINTIFF’S BRIEF IN**

) **OPPOSITION TO “MOTION**

Defendants.) **TO COMPEL FOR SIGNED**

) **MEDICAL AUTHORIZATIONS”**

) **AND MOTION FOR**

) **ATTORNEY’S FEES**

1. **Introduction**

Defendant’s *Motion to Compel* is breathtaking in its failure to accurately report what has transpired in this matter, or to address the true issue presented. The defense did indeed request that Plaintiff execute a Medical Authorization it provided to Plaintiff. The defense has conveniently failed to attach a copy of the Authorization in question, and so Plaintiff has attached it hereto. *Plaintiff’s Exhibit “1.”* Even the most cursory review of that Authorization demonstrates that it *does not comport with Ohio law*, specifically R.C. §2317.02(B). *See infra*.

The Authorization in question, among other things, would allow the defense access to:

“history, diagnosis and/or treatment of *drug or alcohol abuse, mental illness, psychological and/or psychiatric treatment*, counseling records/notes, *genetic testing* or *communicable disease*, including *Human Immunodeficiency Virus (HIV)*, and *Acquired Immune Deficiency Syndrome (AIDS)*.”

*Exhibit “1”* (emphasis added).

Furthermore, the Authorization is not limited to the parts of the body which Plaintiff alleges that she injured in the car collision which is the subject of this action.

The defense *misrepresented* the nature and scope of this Authorization at the recent Case Management Conference of this matter, claiming that it fully comported with Ohio law. In its *Motion*, the defense also fails to include Plaintiff counsel’s response to Defendant’s request. By letter of August 19, 2013 (*Plaintiff’s Exhibit “2”)*, Plaintiff’s counsel pointed out-the legal deficiencies of the defense’s Authorization. *Id.* But, Plaintiff *never refused* to provide Authorizations to the defense. To the contrary, counsel offered to provide signed Authorizations which do pass legal muster:

“As I attempted to explain during the phone CMC, I have Authorizations which *do* comport with R.C. §2317.02(B). If you confirm that such Authorizations would be sufficient, and specify the medical providers from which you seek records, and I will draft such Authorizations, have my client sign them, and provide them to you. We will do so with the understanding that copies of all records obtained be provided to me. I look forward to hearing from you in that regard.”

*Id*. (emphasis in original).

Instead of responding to the Plaintiff, and without otherwise attempting to resolve this issue (in violation of *Civil Rule* 37(E)) defense counsel has filed this spurious *Motion to Compel*. For the reasons that follow, such *Motion* must be denied.

1. **Statement of Law**

In general, a person’s medical records are protected from disclosure to any third-party by the Physician-Patient Privilege. R.C.§2317.02(B). The filing of a lawsuit constitutes a *limited waiver* of the Privilege, *but only* as to such matters related “*causally or historically* to physical or mental injuries” alleged in the claim. *Id*., (emphasis added). In *Wooten v. Westfield Insurance Co.*, 181 Ohio App. 3d 59; 2009-Ohio-494; 907 N.E.2d 1219 (8th Dist.), our Court of Appeals held that blanket medical authorizations, such as the one Defendant herein demands that Plaintiff sign, are impermissible. As the Court admonished:

“[I]t is nonetheless not true that a plaintiff filing a personal injury claim opens herself up to exposure, without limitation, of *all* of her medical records. Rather, R.C. 2317.02(B)(3)(a) limits discovery in such a case to medical records that are causally or historically related to the physical or mental injuries that are relevant to the issues in the case.”

*Id*. at 907 N.E.2d

p. 1221 (emphasis in original)

In *Piatt v. Miller*, 2010-Ohio-1363 (6th Dist.)(concurring opinion), the rationale behind the prohibition against overbroad medical authorizations is made clear:

“. . .[B]road discovery requests for a plaintiff’s entire medical history, such as demanding an all-encompassing HIPPA release, are improper ‘fishing expeditions,’ designed to embarrass, intimidate and stifle a plaintiff’s claims. There is no provision in the discovery rules to compel execution of such a release, which is tantamount to requiring the creation of documents that do not exist. Further, granting a motion to compel such overbroad requests creates a chilling effect on an injured plaintiff’s willingness to file suit and risk the unnecessary exposure of private, unrelated medical information.”

Our Court of Appeals has specifically reversed a trial court order to sign authorizations which allowed the release of “AIDS and HIV, mental health services, and alcohol and drug abuse treatment.” *Pinnix v. Marc Glassman, Inc.*, 2012-Ohio-3263 (8th Dist.).

In short, a plaintiff in a personal injury case still enjoys the Physician-Patient Privilege to keep unrelated medical records from the prying eyes of the defense. The Authorization Defendant demands that Plaintiff sign is not limited to the described areas of the body injured, and would allow the defense to rummage through highly personal and private, irrelevant records.

In the present case, Plaintiff alleges that as a result of this collision, she suffered a *right wrist fracture*, and minor *low back strain* and *knee bruise*. Plainly, HIV/AIDS tests, prior psychiatric care, and the like have nothing to do with those injuries. Plaintiff has not waived the Privilege regarding unrelated medical records and as such cannot be compelled to sign an Authorization for defense counsel to obtain such records. As such, Defendant’s *Motion to Compel* must be denied.

1. **Attorney’s Fees**

*Civil Rule* 37(E) requires that *before* filing a *Motion to Compel*, a party must “make a reasonable effort to resolve the matter through discussion” with opposing counsel. Defense counsel failed to do so here, unnecessarily wasting the time of this Court, and forcing Plaintiff to respond to a specious *Motion*. Moreover, the Rule requires that a *Motion to Compel* “shall be accompanied by a statement reciting the efforts made to resolve the matter in accordance with this section.” *Id.* Again, defense counsel failed to do so. Finally, *Civil Rule* 37(A)(4) authorizes the Court to award attorney’s fees to the non-moving pending, if such *Motion to Compel* is denied. Such an award is justified here.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Plaintiff’s Brief In Opposition to “Motion to Compel for Signed Medical Authorizations” and Motion for Attorney’s Fees was served via first-class U.S. Mail, postage prepaid, this \_\_\_\_\_ day of September, 2013, upon:

**Ms. Karen Fout**

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