ORIGINAL

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

PATRICK C. DESMOND AND MARY C. DESMOND, INDIVIDUALLY, AND MARY C. DESMOND, AS ADMINISTRATRIX OF THE ESTATE OF PATRICK W. DESMOND, Plaintiffs, v. NARCONON OF GEORGIA, INC. DELGADO DEVELOPMENT, INC., SOVEREIGN PLACE, LLC, SOVEREIGN PLACE APARTMENT MANAGEMENT, INC., LISA CAROLINA ROBBINS, M.D. THE ROBBINS GROUP, INC., and NARCONON INTERNATIONAL, Defendants.	)	Civil Action No. 10A28641-2

PLAINTIFFS' RESPONSE TO DEFENDANT NARCONON OF GEORGIA'S MOTION TO COMPEL

This case involves the death of a young man while enrolled in Narconon of Georgia ("Narconon"), a purported drug and alcohol rehabilitation center in Norcross, Georgia. Plaintiffs contend that Narconon was both negligent in its treatment of its patients and also committed fraud by misrepresenting the nature of the facility to its patients, their families, and the judicial system.

Narconon has filed a Motion to Compel Plaintiffs to respond further to certain interrogatories. Although Plaintiffs do not dispute that the discovery process in this case has been delayed, Narconon fails to mention that its own

Counsel's misconduct during the deposition of one of the key witnesses is the sole cause of the interruption in discovery and has Plaintiffs inability to respond fully to most of the interrogatories complained of in its motion. Plaintiffs have been forced to essentially halt discovery and file a Motion for Sanctions, requesting the Court to intervene and prohibit obstructive behavior during the remainder of discovery. Plaintiffs' Motion for Sanctions is currently pending before the Court and is relevant to the issues in Narconon's Motion to Compel as set out in more detail below.[1]

Accordingly, Plaintiffs respectfully request that Narconon's motion be DENIED.

FACTUAL BACKGROUND

In 2007, Plaintiffs' son, Patrick Desmond, was arrested following a traffic stop in Rockledge, Florida where a small amount of drugs was found in his vehicle. He was charged with driving under the influence and third degree felony drug possession. Prosecution of the felony drug charge was deferred in favor of a Brevard County Drug Court (the "Drug Court") program known as Pretrial Intervention Supervision. The Drug Court requires individuals to participate in court-approved rehabilitation programs in lieu of adjudication and incarceration. Participants in the program have the choice of entering a state-run drug and alcohol rehabilitation program or another program that must be approved by the Drug Court

[1] In support of their Response to Defendant's Motion to Compel, Plaintiffs incorporate by reference Plaintiffs' Motion for Sanctions.

For the Drug Court to approve a non-state-run program, the Drug Court required the drug and alcohol rehabilitation program be an in-patient, residential facility, with 24-hour supervision, where Patrick would be supervised for a period of at least six months. Patrick's parents searched for an appropriate drug rehabilitation facility, and they eventually decided to send Patrick to Narconon's facility in Georgia.[2]

Prior to his parents' deciding upon Narconon and obtaining approval from the Drug Court, agents of Narconon, including its Executive Director, represented both to Patrick's parents *and* to the manager of the Drug Court that Narconon was a *residential* facility and met the Drug Court's other requirements. In truth, however, Narconon was never licensed by the Georgia Department of Human Resources ("DHR") to operate any category of residential programs. Rather, Narconon was licensed to operate only an Ambulatory Detoxification Treatment and Education Program, *which is specifically restricted to treatment in a non-residential setting.* Despite that restriction, Narconon maintained and controlled an off-site housing facility for Narconon's patients, which Narconon's agents, specifically Mary Reiser, represented as a housing unit where patients would be monitored at all times.

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[2] Defendant Narconon is a subsidiary of Narconon International, which owns drug rehabilitation centers throughout the United States and around the world.

Patrick Desmond, however, was never fully supervised while enrolled in Narconon because Narconon was not a residential facility - despite the misrepresentations stating otherwise to Patrick's parents and to the Drug Court. Instead, he was allowed to come and go as he pleased. Narconon's "housing facility" was staffed with former and current patients who were dealing with their own recoveries from addiction, so Patrick was left without the proper supervision and guidance he needed and was required by the Drug Court. Because of this lack of supervision, Patrick was introduced to heroine (a drug that he had never used before) and ultimately overdosed resulting in his death.

DISCOVERY ABUSE IN THIS CASE

The parties proceeded with discovery in this case with few hurdles until the deposition of Narconon's Executive Director, Mary Reiser. As Executive Director of Narconon, Mary Reiser has information essential to Plaintiffs' ability to prove their case as well as information directly responsive to several of Narconon's discovery requests. During Ms. Reiser's deposition, counsel for Narconon ("Defense Counsel") conducted herself in a manner that far exceeded behavior that is acceptable under both Georgia's Rules of Professional Conduct and the Georgia Civil Practice Act.

In a nutshell, Defense Counsel disrupted the testimony with repeated objections, comments, and attempts to shape the witnesses testimony much so that Plaintiffs have been forced to move the Court for entry of sanctions

against Defense Counsel. The conduct of Defense Counsel during that deposition also hindered Plaintiffs' efforts to obtain relevant information. Plaintiffs have not taken any other depositions since encountering the disruptive behavior during Ms. Reiser's deposition in large part because Plaintiffs have requested relief from the Court including entry of a Discovery Order to govern future depositions.

ARGUMENT AND CITATION OF AUTHORITY

Narconon alleges that Plaintiffs have failed to adequately respond to interrogatories requesting: (1) information relating to Plaintiffs' allegations ("contention interrogatories"); (2) an itemized list of damages; and (3) an executed "release" to obtain educational records. However, Plaintiffs have responded appropriately, with information currently available, to every interrogatory. To the extent that Narconon complains that the discovery process has been delayed up to this point, it has only its own counsel to blame.

Contention Interrogatories and Information within Narconon's Control.

In its motion, Narconon complains that Plaintiffs have failed to adequately identify the following:

- Every action or omission that Plaintiffs contend constitutes an act of negligence on the part of each Defendant (commonly referred to as a "contention interrogatory" (Interrogatory No. 6);
- All misrepresentations made by Defendants (Interrogatory No. 25);
- All contracts among the parties (Interrogatory No. 12); and,

First, the interrogatories requesting specificity regarding Plaintiffs' contentions, including allegations of negligence and misrepresentation, are premature. Contention interrogatories generally seek to have a party state what it contends and to identify the bases for those contentions. See generally In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 332-334 (N.D. Ca. 1985). No reported Georgia case directly addresses the timing of contention interrogatories, but Georgia's statute concerning contention interrogatories is identical to the corresponding statute in the Federal Rules of Civil Procedure. Compare O.C.G.A. § 9-11-33(b)(2), with Fed. R. Civ. P. 33(c). Both provide:

> An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or to the application of law to fact; but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

O.C.G.A. § 9-11-33(b)(2); Fed. R. Civ. P. 33(c). As such, federal case law is relevant in interpreting the statute's meaning. Se, e.g., G.H. Bass & Co. v. Fulton Co. Bd. Of Tax Assessors, 268 Ga. 327 (1997)(relying on federal case law to analyze O.G.A.A. § 9-11-36).

"[C]ontention interrogatories are often postponed so that a responding party can learn *through discovery* enough information to allow the responding party to formulate a useful response." Lexington Ins. Co. v. Commonwealth Ins. Co., No. C98-3477CRB(JCS), 1999 WL 33292943 at *8

(N.D.Cal.,1999) (emphasis in original). As a general rule, contention interrogatories are deemed premature until discovery is complete or substantially complete. See U.S. v. International Longshoremen's Ass'n, AFL-CIO, 2006 WL 2014093 at *3 (E.D.N.Y.,2006); Brassell v. Turner, Case No, 3:05CV476LS, 2006 WL 1806465, at *4-5 (S,D, Miss, June 29, 2006).

Courts have identified multiple reasons why responses to contention interrogatories should be delayed until discovery is complete. For example, in Brassell, the court cautioned allowing "...the use of contention interrogatories early in the discovery process, on grounds that, at that stage, they are more likely used for harassment than as a useful discovery device." 2006 WL 1806456, at *3. The court held that in order prevent the potential abuse by the use of contention interrogatories, a party serving early contention interrogatories should bear the burden of justifying their use.

> There is substantial reason to believe that the *early* knee jerk filing of sets of contention interrogatories that systematically track all the allegations in an opposing party's pleadings is a serious form of discovery abuse. Such comprehensive sets of contention interrogatories can be almost mindlessly generated, can be used to impose great burdens on opponents, and can generate a great deal of counterproductive friction between parties and counsel.

Id.

A federal courts in the Northern District of Georgia found that "'other productive means for clarifying and narrowing issues and the contentions of the parties' are available, particularly when [contention interrogatories are] served before substantial completion of discovery. 'Without such controls,

substantial time, money, and energy may be wasted on contention interrogatories that are either premature or over inclusive.'" In re Domestic Ail' Transp. Antitrust Litigation, Case No. 1:90-CV-2485-MHS, 1992 WL 120351, at * 1 (N.D. Ga. April 8, 1992) (quoting Manual of Complex Litigation Second at § 21.463) (internal citation omitted). In other words, requiring a party to answer contention interrogatories prior to the conclusion of discovery would require that the party articulate theories of its case not yet fully developed. B. Braun Medical Inc. v. Abbott Laboratories, 155 F,R.D. 525, 527 (E.D. Pa. 1994).

Here, Narconon as failed to meet its burden to justify the use of contention interrogatories nos. 6, 12, and 25. Furthermore, the interrogatories requesting information related to contracts among the parties and misrepresentations made by Narconon are premature because they request information that is, at least in part, within Narconon's control - not Plaintiffs'. Since Narconon has completely obstructed the discovery process in this case, and Plaintiffs have been forced to file a Motion for Sanctions, Plaintiffs have not been in a position to solicit adequate information which could be responsive to Narconon's discovery requests. In other words, Narconon has moved to compel answers to interrogatories that Plaintiffs cannot answer at this point in time solely because of Narconon's efforts to thwart the discovery process in this case.

Damages Interrogatories

Educational Records

In interrogatory no. 27, Narconon requested that Plaintiffs sign HIPPA releases for all of Patrick Desmond's medical providers. Although Plaintiff initially objected, they ultimately complied with Narconon's request by executing at least five HIPPA authorizations for release of Patrick Desmond's medical records. In its Motion to Compel, Narconon alleges that interrogatory no. 27 also requested that Plaintiffs sign releases for educational records – however interrogatory No. 27 is limited *only* to HIPPA releases and does not mention releases for educational records. Specifically, that request reads as follows:

> Please state whether you will sign a HIPPA release form for all your decedent's medical care providers. If so, please copy as necessary, sign the form attached and return it with your responses. If not, please state why not.

(Interrogatory No. 27)

Instead, Narconon informally requested that Plaintiffs sign releases for educational records by letter.

Plaintiffs do not objected, generally, to the production of educational records, but they do object to the manner in which Narconon demands that they be produced and the scope of the records requested for several reasons. First, if Narconon wishes to obtain copies of Patrick Desmond's educational records, it needs to send Requests for Production of Documents pursuant to O.C.G.A. § 9-11-34. Upon receiving such a request, Plaintiffs will then have an obligation to attempt to obtain all discoverable records and produce those

within a permissible scope. Georgia law, however, does not require Plaintiffs to execute a release form to allow Narconon to skirt the discovery process and obtain those records independently before Plaintiffs have a chance to review the documents to determine whether they contain any privileged information.

Next, the authorizations Narconon has proposed are overly broad and request information that is not discoverable · such as school counseling records. Georgia law provides that parties may obtain discovery regarding any matter which is not privileged and which is relevant to the subject matter of the case. See O.C.G.A. § 9-11-26. While a decedent's medical records may be generally discoverable in a wrongful death case, a defendant's access to a plaintiff's medical records is not unlimited. There is a strict limitation on discovery of records relating to psychiatric conditions when plaintiff's psychiatric condition is not at issue. See 42 USC § 290dd-2; O.C.G.A. § 24-9-21; O.C.G.A. § 37-3-166(a)(2). Such privilege is "the most restrictive in the discovery and evidence codes." Sletto v. Hospital Authority, 239 Ga. App. 203, 208 (1999) (Eldridge, J., concurring).

Here, Plaintiffs have not placed Patrick's mental health at issue in this case, and Narconon has failed to set forth *any* reason that it should have access to highly confidential and privileged information that may be contained in school counseling and/or medical records.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that Narconon's Motion to Compel be DENIED.

This the 28th day of June, 2011.

HARRIS PENN LOWRY DELCAMPO, LLP

JEFFREY R. HARRIS
Georgia Bar No: 330315
DARREN W. PENN
Georgia Bar No. 571322
LAURA H. SPIRES
Georgia Bar No. 002447
JED D. MANTON
Georgia Bar No. 868587

400 Colony Square
1201 Peachtree St., NE, Suite 900
Atlanta, GA 30361
Telephone: (404) 961-7650
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that I have this day submitted **PLAINTIFFS' RESPONSE TO DEFENDANT NARCONON OF GEORGIA'S MOTION TO COMPEL** via U.S. Mail proper postage prepaid, addressed as follows:

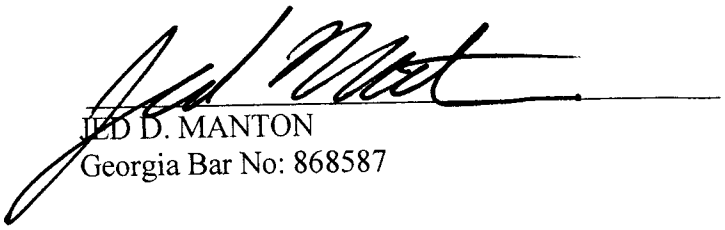
DREW, ECKL & FARNHAM, LLP
STEVAN A. MILLER
KATHRYN S. WHITLOCK
880 W. Peachtree Street
P.O. Box 7600
Atlanta, Georgia 30357

BELLI WEIL GROZBEAN & DAVIS
MELANIE C. EYRE
8010 Roswell Road, Suite 200
Atlanta, GA 30350

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
ROBERT G. TANNER
JEFFREY N. AMASON
3344 Peachtree Road, Suite 2400
Atlanta, Georgia 30326

This the 28th day of June, 2011.

HARRIS PENN LOWRY DELCAMPO, LLP



JED D. MANTON
Georgia Bar No: 868587

400 Colony Square
1201 Peachtree St., NE
Suite 900
Atlanta, GA 30361
Telephone: (404) 961-7650

Attorneys for Plaintiffs