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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

DAVID ARENBERG,)	
)	
Plaintiff,)	2:10-cv-02228 JWS
)	
vs.)	ORDER AND OPINION
)	
CHARLES L. RYAN, et al.,)	[Re: Motion at docket 163]
)	
Defendants.)	
)	

I. MOTION PRESENTED

At docket 163, plaintiff David Arenberg (“Arenberg”) moves to exclude evidence of or reference to the cancellation and amendment of Arizona Department of Corrections (“ADC”) contracts relating to health services to inmates. The remaining defendants, Charles L. Ryan (“Ryan”), Richard Rowe (“Rowe”), and James Taylor (“Taylor”) (collectively “Defendants”) oppose the motion in their response at docket 172. Arenberg replies at docket 175. Oral argument would not assist the court.

II. BACKGROUND

The court’s order at docket 117 lays out in considerable detail the background of this lawsuit. The parties are familiar with that background, and it need not be repeated

1 here. Readers unfamiliar with the background may wish to read the order at docket 117
2 which, among other things, noted that Arenberg's Eight Amendment claims would
3 depend on whether or not he could prove that any of the Defendants were deliberately
4 indifferent to his admittedly serious medical need.¹ Background especially pertinent to
5 the pending motion is also discussed in the next section of this order.
6

7 III. DISCUSSION

8 Arenberg argues that his request to preclude the evidence should be granted
9 either pursuant to Fed. R. Evid. 403 because its probative value is substantially
10 outweighed by the danger of unfair prejudice, confusion of the issues and potential to
11 mislead the jury, or because Defendants have admitted that the contract cancellations
12 and amendments did not cause the delay in providing medical care.
13

14 With respect to the motion at bar, it is only Arenberg's remaining claim against
15 Ryan which is pertinent, for his claims against Rowe and Taylor are not directly
16 implicated by the argument over ADC contract cancellations and amendments. In its
17 earlier order, the court carefully reviewed Arenberg's claims against Ryan and held that
18 Ryan might be liable to Arenberg based on the following analysis:
19

20 The evidence shows that ADC did not enter into new contracts for
21 inpatient and outpatient medical services until late 2010—a year after the
22 2009 cancellations. Ryan avers that immediately after the November
23 2009 contract cancellations, ADC entered into direct contracts for
24 specialty services on an emergency basis and, in January 2010, ADC
25 provided its facilities a list of specialty services on an emergency basis
26 and, in January 2010, ADC provided its facilities a list of specialty
27 providers willing to see inmates. But Defendants do not proffer a copy of
28 this list of providers or any of the direct contract information, and there is
no explanation why Plaintiff was not seen by one of these providers.

¹The order also dismissed Arenberg's claim against defendant Sandra Lawrence.

1 Because he was not seen by one of these providers, Plaintiff did not
2 receive any specialist care following the October 14, 2009 consult request
3 until he saw Dr. Kau on November 17, 2010. The Court finds that there
4 exists a material factual dispute whether Ryan's failure to maintain and/or
timely obtain new contracts for outside medical providers caused the over
one-year delay in necessary medical treatment for Plaintiff.²

5 Thus, the court has held that evidence of the role of ADC contract cancellations and
6 amendments is central to the question of whether Ryan is liable to plaintiff. Moreover,
7 plaintiff himself framed his claim against Ryan as follows: "[Ryan's] failure to maintain
8 an urology contract starting in November, 2009 through mid-2010 caused plaintiff to
9 have no access to needed medical care [which] constituted deliberate indifference to his
10 serious medical needs. . . ."³ Thus, it is clear that evidence concerning the ADC
11 contract cancellations and amendments is of critical importance to Arenberg's claim
12 against Ryan and to Ryan's defense against that claim. The court finds little or no
13 danger of unfair prejudice, confusion of the issues, and potential to mislead the jury.
14 Arenberg's Rule 403 argument lacks merit.

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17 In urging that Defendants have admitted that the contract cancellations and
18 amendments did not play a role in the delay, Arenberg points to several matters. First,
19 he says that this "admission" may be found at pages 7 and 8 of the Defendants' Motion
20 for Summary Judgment.⁴ The court has carefully reviewed those pages and cannot find
21 any mention of the contract cancellations and amendments there. Rather, those pages
22 set out a chronology of the events and actions involved in Arenberg's care. In his
23

24
25 ²Doc. 117 at p. 18.

26 ³First Amended Complaint, doc. 64 at p. 7.

27 ⁴Doc. 101, copy also reproduced as doc. 163-1.

1 motion Arenberg suggests that what amounts to an admission respecting the contract
2 cancellations and amendments are the references to notes indicating that Arenberg
3 himself refused care. Arenberg is surely not admitting that his own actions were solely
4 responsible for the delay in his care. The delay may, or may not, be attributable to
5 Ryan's actions or inactions.
6

7 Next, Arenberg points to Taylor's response to Arenberg's Interrogatory No. 8.⁵
8 Once again, the cited material contains no reference to any contract cancellation or
9 amendment. Moreover, even if it did, it is not an admission by defendant Ryan as to
10 whom the contract cancellation and amendment issues are relevant.
11

12 Next, Arenberg points to Ryan's response to Arenberg's Second Supplemental
13 Interrogatory No. 4.⁶ Ryan's response reads as follows: "I have been advised by ADC
14 personnel that Plaintiff's initial consultation with Scottsdale Urologic Surgeons was
15 scheduled for August 20, 2010. That appointment was canceled by Scottsdale Urologic
16 Surgeons because their doctor was out having his own surgery."⁷ Surely Arenberg is
17 not conceding that Ryan is not liable because of the fact that the surgeon was not
18 available when originally scheduled. The court fails to see how this interrogatory
19 answer eliminates the need to consider the contract cancellations and amendments in
20 order to determine whether Ryan is liable to Arenberg.
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25 ⁵A copy is reproduced at docket 163-2.

26 ⁶A copy is reproduced at docket 163-3.

27 ⁷*Id.* at p. 3.

