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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DONDI VAN HORN,	)	1:08cv1622 LJO DLB
	)	
	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION TO COMPEL
Plaintiff,	)	(Document 96)
v.	)	
	)	
TINA HORNBEAK, et al.,	)	
	)	
	)	
Defendants.	)	

Plaintiff Dondi Van Horn (“Plaintiff”) filed the instant motion to compel on July 10, 2009. The motion was heard on July 31, 2009, before the Honorable Dennis L. Beck, United States Magistrate Judge. Brandon Almond appeared on behalf of Plaintiff. Daniel Wainwright appeared on behalf of Defendant Madera Community Hospital (“MCH”). Christopher Bell appeared on behalf of Defendant Naeem Siddiqi, M.D., and Travis Stokes appeared on behalf of Defendant Tina Dhillon, M.D.

**BACKGROUND**

Plaintiff filed this civil rights action on October 24, 2008. On June 25, 2009, she filed a Second Amended Complaint (“SAC”) alleging deliberate indifference to a serious medical need in violation of [42 U.S.C. § 1983](#), as well as state law causes of action. Plaintiff names Tina Hornbeak, Warden of Valley State Prison for Women (“VSPW”), James Tilton, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), Robin Dezember, Chief

1 Deputy Secretary of CDCR, Jeff Thompson, Director of CDCR, Dr. Virk, Chief Medical Officer  
2 VSPW, James Heinrich, physician at VSPW, Madera Community Hospital (“MCH”) and its  
3 physicians, Tina Dhillon, M.D., and Naeem Siddiqi, M.D., as Defendants.

4 Plaintiff’s allegations arise from treatment she received while an inmate at VSPW. The  
5 treatment she complains of occurred at both VSPW and MCH, a private hospital that contracted  
6 with CDCR to treat inmate patients. Plaintiff alleges that this agreement required MCH to  
7 comply with CDCR medical policies, practices and procedures.

8 According to the SAC, Plaintiff was 34 weeks pregnant when she arrived at VSPW on  
9 July 31, 2007. Dr. Heinrich was the primary VSPW physician responsible for her prenatal care.  
10 In August 2007, Plaintiff was treated by Dr. Heinrich and MCH staff a total of six times for  
11 matters related to her pregnancy and a fall. On August 27, 2007, at 38 to 39 weeks pregnant,  
12 Plaintiff delivered her son by cesarean section at MCH. Shortly before her water broke, MCH  
13 physician Dr. Dhillon asked Plaintiff if she knew the results of her Group B Streptococcus  
14 (“GBS”) test.<sup>1</sup> Plaintiff told Dr. Dhillon that she did not know if she had been tested. MCH  
15 contacted VSPW to obtain a copy of her most recent ultrasound and GBS test results, but the  
16 records could not be located. Plaintiff did not receive antibiotics during delivery.

17 Immediately after birth, Plaintiff’s son was considered “vigorous” and had an Apgar score  
18 of 9. However, his condition deteriorated rapidly and he died the next day, August 27, 2007.  
19 The cause of death was a perinatal GBS infection.

20 Plaintiff alleges that during her treatment at VSPW, she was not tested for GBS despite  
21 numerous opportunities to do so. She further alleges that MCH failed to perform a GBS test and  
22 failed to treat Plaintiff for a possible infection during delivery. She alleges that consistent with  
23 CDCR’s failure to have in place and/or failure to follow a policy mandating the testing of  
24 pregnant women for GBS, MCH also failed in this regard.

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26 <sup>1</sup> Plaintiff explains that GBS bacteria, if passed to a baby during delivery, can cause serious long term  
27 health problems and, in many cases, death. Both the Center for Disease Control and the American College of  
28 Obstetricians and Gynecologists passed guidelines to address the dangers of GBS in newborns. The guidelines  
recommend that pregnant women be tested for GBS during the 35th to 37th weeks of pregnancy. Antibiotics given  
to the mother during delivery significantly reduce the risk of passing GBS to the newborn.

1 Based on these facts, Plaintiff alleges the following causes of action:

- 2 1. Deliberate Indifference pursuant to [42 U.S.C. section 1983](#)- CDCR Defendants
- 3 2. Deliberate Indifference pursuant to [42 U.S.C. section 1983](#)- VSPW Defendants
- 4 3 Professional Negligence- Dr. Heinrich
- 5 4. Professional Negligence- MCH, Dr. Dhillon and Dr. Siddiqi
- 6 5. Wrongful Death- Dr. Heinrich
- 7 6. Wrongful Death- MCH, Dr. Dhillon and Dr. Siddiqi
- 8 7. Deliberate Indifference pursuant to [42 U.S.C. § 1983](#)- MCH

9 On July 10, 2009, Plaintiff filed the instant motion to compel MCH to provide responsive  
10 documents to her Request for Production of Documents. The parties filed their joint statement  
11 on July 28, 2009.

### 12 DISCUSSION

13 Rule 26(b)(1) of the Federal Rules of Civil Procedure provides as follows:

14 Parties may obtain discovery regarding any matter, not privileged, which is relevant to the  
15 claim or defense of any party, including the existence, description, nature, custody,  
16 condition, and location of any books, documents, or other tangible things and the identity  
17 and location of persons having knowledge of any discoverable matter.... The information  
sought need not be admissible at trial if the information sought appears reasonably  
calculated to lead to the discovery of admissible evidence.

18 In federal question cases such as this, privileges asserted in response to discovery requests  
19 are determined under federal law, not the law of the forum state. [Fed.R.Evid. 501](#); [United States](#)  
20 [v. Zolin, 491 U.S. 554, 562 \(1989\)](#).

#### 21 A. Request Numbers 12, 13, 14, 15, 16 and 19

22 These requests seek disciplinary investigations or actions taken against Dr. Siddiqi and  
23 Dr. Dhillon, complaints of grievances filed against them, their reviews and performance  
24 evaluations, prior litigation against these doctors, and prior litigation against MCH related to  
25 obstetrics or neonatal services, treatments or diagnoses.

26 As an initial matter, the parties indicated at the hearing that they have agreed to limit  
27 Numbers 12, 13 and 14 to investigations, etc., from 2004 through August 27, 2007. Similarly,  
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1 the parties have agreed to limit Numbers 15 and 16 to prior litigation from 2000 through August  
2 27, 2007.

3 Defendants MCH, Dr. Siddiqi and Dr. Dhillon object to these requests mainly by  
4 attempting to characterize this action, at its core, as a straight medical malpractice action and thus  
5 arguing that the requested documents are not relevant. As Defendants know, however, this  
6 action involves Eighth Amendment claims under [42 U.S.C. § 1983](#) of deliberate indifference to  
7 serious medical needs against both the State Defendants and MCH, as a State actor. Although  
8 Defendants attempt to narrow the legal claims, this action goes beyond a medical malpractice  
9 case where only the standard of care is relevant.

10 Given the Eighth Amendment legal claims at issue, the requested documents are relevant  
11 to Plaintiff's attempt to demonstrate deliberate indifference. Plaintiff alleges, in part, that MCH  
12 either failed to have an effective GBS-testing policy in place and/or failed to enforce the policy.  
13 Documents relating to disciplinary investigations, etc., against Dr. Dhillon and/or Dr. Siddiqi  
14 may show whether (1) MCH was on notice of any instances of non-compliance by Dr. Dhillon  
15 and/or Dr. Siddiqi; and (2) whether MCH took any actions to enforce the policies at issue.  
16 Certainly, if MCH was aware of prior violations of prenatal testing policies by either doctor and  
17 failed to take any corrective action, such evidence would be relevant to a deliberate indifference  
18 analysis.

19 Therefore, the Court GRANTS Plaintiff's motion to compel responses to Request  
20 Numbers 12, 13, 14, 15, 16 and 19. The requests SHALL BE LIMITED, however, to (1) the  
21 time frames referenced above<sup>2</sup>; and (2) complaints, grievances, disciplinary investigations and  
22 actions, and litigation related to breaches of policies and/or procedures for prenatal care,  
23 including prenatal testing. "Prenatal" shall be defined as the period occurring or existing before  
24 birth.

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28 <sup>2</sup> Although the parties did not specify an agreement as to the time frame in Number 19, the Court finds that  
the request should be limited to reviews and performances evaluations from 2004 through August 27, 2007.

1 B. Request Numbers 17

2 Request Number 17 requests documents relating to Dr. Dhillon’s or Dr. Siddiqi’s training  
3 in “obstetrics, neonatology, or GBS.” For the reasons discussed above, the requested documents  
4 are relevant to Plaintiff’s section 1983 claim. Therefore, the Court GRANTS Plaintiff’s motion  
5 to compel a response to Request Number 17, but LIMITS the request to training, etc. for the last  
6 10 years.

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IT IS SO ORDERED.

**Dated:** August 7, 2009

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE