

1 defendant's experts have no foundation for their opinions and they should be barred from
2 testifying regarding why defendant Medina discontinued Tramadol. Plaintiff also argues that
3 defendant's expert witnesses Dr. Barnett and Williamson should not be allowed to testify because
4 defendant has listed two other expert witnesses, Dr. Napomuceno and Dr. Swingle. Plaintiff
5 argues that the testimony of Dr. Barnett and Dr. Williamson is cumulative and an unnecessary
6 waste of time.

7 On October 27, 2014, plaintiff filed a motion alleging that defendant's experts Dr. Barnett
8 and Dr. Williamson failed to review all of plaintiff's relevant medical records as well as relevant
9 California Department of Corrections ("CDCR") policies in forming their opinions. (ECF No.
10 190.) Plaintiff requests that Dr. Barnett and Dr. Williamson be ordered to review all of the
11 relevant medical records and policies and file supplemental reports. Plaintiff also alleges that in
12 his report, Dr. Barnett refers to "standing protocols," which were not produced to plaintiff during
13 discovery or identified by defendant as an exhibit. Plaintiff requests that defendant be ordered to
14 provide plaintiff with a copy of the "standing protocols" referred to in Dr. Barnett's report.

15 On October 27, 2014, plaintiff filed a motion for leave to supplement his motion alleging
16 that defendant's experts failed to review all of his relevant medical records with a letter. (ECF
17 No. 191.) This letter, attached as an exhibit, is from plaintiff to defense counsel. In this letter,
18 plaintiff requests that defense counsel direct the expert witnesses to supplement their reports
19 based on records, laws and policies identified by plaintiff.

20 *Discussion*

21 Plaintiff requests that defendant's experts be ordered to prepare supplemental expert
22 reports based on their review of additional documents provided to them by plaintiff. Federal Rule
23 of Civil Procedure 26(e) provides that a party must supplement a report made by their expert
24 witness if the party learns that in some material respect the disclosure is incomplete or incorrect
25 and if the additional or corrective information has not otherwise been made known to the other
26 parties during the discovery process or in writing.

27 In the opposition to plaintiff's motions, defendant correctly observes that it is a party's
28 obligation to supplement expert reports when necessary, and not the opposing party's right to

1 force the opposing party to review and supplement their reports. In the opposition, defendant
2 indicates that he will discuss the documents referred to in plaintiff's motions with his retained
3 experts to determine if any supplemental reports are in fact necessary.

4 Plaintiff's claim that the opinions of defendant's experts are not based on a review of all
5 of the relevant records and policies should be raised in a motion in limine. See Fed. R. Evid. 702
6 (setting forth standards for admissibility of expert testimony). Similarly, plaintiff's requests that
7 Dr. Barnett and Dr. Williamson be barred from testifying on grounds that their testimony is
8 cumulative and that defendant's experts be barred from testifying because defendant Medina did
9 not prepare complete records should also be raised in a motion in limine.

10 Turning to plaintiff's request that defendant identify the "standing protocols" referred to
11 in Dr. Barnett's declaration, an expert report ordinarily must contain "a complete statement of all
12 opinions to be expressed and the basis and reasons therefor." See Fed.R.Civ.P. 26(a)(2)(B). The
13 expert report must "stat[e] the testimony the witness is expected to present during direct
14 examination, together with the reasons therefor" and "disclose the data and other information
15 considered by the expert and any exhibits or charts that summarize or support the expert's
16 opinions." See id., Advisory Committee Notes, 1993 Amendments.

17 Plaintiff cites paragraph 10 of Dr. Barnett's report as referring to "standing protocols":

18 PA Medina did not substitute his judgment for that of other
19 physicians. The rules governing PA Medina's prescribing allow
20 him to function pursuant to practices established with his
21 supervisor(s). In 2008, CDCR physicians (all of whom were
22 designated as PA Supervisors) regarded tramadol as a risky drug on
23 account of its propensity to addict users. As a non-formulary
24 medication tramadol was also subject to the *rule* that it should be
25 prescribed only if a demonstrable need exists, and when other drugs
26 on the formulary have been ineffective. On November 10, 2008,
27 there was no clear and objective evidence that tramadol was
28 medically necessary after 7 days off the medication. Thus PA
Medina[s] order to discontinue the prescription was consistent with
the *standing protocols* that reflected the prevailing judgment of his
physician supervisors.

26 (ECF No. 190 at 34.) (emphasis added.)

27 Defendant is directed to clarify whether the "standing protocols" regarding tramadol
28 referred to by Dr. Barnett were written down and, if so, where.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for an extension of time to file objections to defendant’s experts reports (ECF No. 188) is granted;

2. Plaintiff’s motion for an order directing defendant’s experts to review additional documents (ECF No. 190) is granted with respect to the request that defendant clarify Dr. Barnett’s reference to “standing protocols” in his report; defendant shall file a response to this request within ten days of the date of this order; plaintiff’s motion is denied in all other respects;

3. Plaintiff’s motion for leave to supplement his motion for an order directing defendant’s experts to review additional reports (ECF No. 191) is denied as unnecessary.

IT IS SO ORDERED.

Dated: December 16, 2014



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT