

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROSALIE A. MOOS-HOLLING,

No. C 07-06240 SI

Plaintiff,

ORDER RE: MEDICAL RECORDS

v.

BAYER CORPORATION DISABILITY PLAN,

Defendant.

United States District Court
For the Northern District of California

On December 19, 2008, the Court held a hearing on the parties' cross-motions for summary judgment. Plaintiff's counsel did not appear at the hearing. The administrative record in this case reflects that Dr. Gerald Goldberg considered the following documents in his peer review (BA 54-1):

- Dr. Mesem note - 11/17/2004
- Dr. Fiscella narrative - 3/15/2005
- Dr. Fiscella office notes - 10/2/2002 to 9/17/2004

It appears, however, that these documents are not part of the administrative record. The Court notes that defendant did not file Dr. Goldberg's report until October 31, 2008, the day dispositive motions were due, so plaintiff could not have made a discovery request for these documents. [Docket No. 25] At oral argument, the Court ordered defense counsel to confer with his client and determine whether the missing records can be obtained and provided to the Court. Defense counsel will file a letter by **January 9, 2009** informing the Court whether he has been successful in locating the records.

IT IS SO ORDERED.

Dated: 12/29/08



 SUSAN ILLSTON
 United States District Judge