

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BELINDA K. and J.H., her minor son,)
)
 Plaintiffs,)
)
 v.)
)
 YOLANDA BALDOVINOS, et. al.,)
)
 Defendants.)
 _____)

Case No.: C 10-02507 PSG
**ORDER DENYING PLAINTIFF’S
MOTION TO SHORTEN TIME**
(Re: Docket No. 85)

On Friday, January 28, 2011, Plaintiff Belinda K. (“Belinda K.”) filed a motion to quash subpoenas served on non-party medical providers, a motion for a protective order, and an *ex parte* motion to shorten time for hearing those motions. Belinda K. argues that unless the court hears her motions to quash and for a protective order before Wednesday, February 2, 2011, the date on which the subpoenas request production, she will suffer substantial harm and irreparable prejudice by any production or attempt by the non-party medical providers to comply with the subpoenas.

On January 31, 2011, Defendants filed an opposition to the *ex parte* motion to shorten time. (*See Opp’n to Ex Parte App.*) Defendants argue that Belinda K. failed to deliver a copy of the *ex parte* motion to Defendants on the day the motion was filed, as required by Civ. L.R. 6-5(b). Additionally Defendants argue that Belinda K.’s objection to the subpoenas is sufficient to prevent the records from being produced on February 2, 2011, and thus Belinda K. has not demonstrated good cause for hearing the motion to quash and for a protective order on shortened

1 time.

2 The Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d “HIPAA”)
3 provides that covered health care providers may only use or disclose protected health information
4 under certain circumstances defined by the regulations promulgated under HIPAA. See 45 CFR §
5 164.502(a). The starting point for the HIPAA regulations at issue is 45 CFR § 164.512(e)(1),
6 which governs the disclosure of confidential health information in judicial proceedings. This
7 regulation allows disclosure in response to a subpoena (and without a court order) in two
8 circumstances. See 45 CFR § 164.512(e)(1)(ii); *Rosales v. City of Bakersfield*, No.
9 1:05-CV-0237 REC TAG, 2006 WL 988605, at *3 (E.D. Cal, Apr. 13, 2006).

10 Disclosure is permitted if the party seeking the information notifies the patient. The
11 requesting party must also inform the covered provider that the patient failed to object to the
12 subpoena or that the court resolved those objections to allow disclosure. See 45 CFR §
13 164.512(e)(1)(ii)(A) and (iii)(C). Alternatively, disclosure is permitted if the requesting party
14 supplies the covered provider with documentation demonstrating either that the parties agreed to a
15 qualified protective order and presented it to the court, or that the requesting party applied for a
16 qualified protective order from the court. See 45 CFR § 164.512(e)(1)(ii)(B) and (iv); *Evans v.*
17 *Tilton*, No. 1:07-CV-01814-DLB PC, WL 3745648, at *2-3 (E.D. Cal Sep. 16, 2010) (finding
18 that HIPAA was violated by disclosure when the patient objected and the requesting party did not
19 apply for a protective order).

20 Belinda K. has objected to the subpoenas and Defendants have not requested a qualified
21 protective order or filed a stipulated order with the court. Thus, if the non-party medical
22 providers are covered entities under HIPAA, HIPAA prohibits them from disclosing Belinda K.’s
23 protected health information until the court resolves Belinda K.’s objections, and there is no need
24 to accelerate the date of that resolution. It appears that at least some of the subpoenas have been
25 directed to health care providers covered by HIPAA.

26 An order shortening time on a motion necessarily delays resolution of other matters
27 pending before the court. Because a motion for such an order is effectively a request to jump the
28 line, good cause is required. See Fed. R. Civ. P. 6(c)(1)(C). In light of the HIPAA regulations

1 prohibiting disclosure where the patient has objected to a subpoena to a covered provider, the
2 court finds no good cause in this instance. Accordingly,

3 IT IS HEREBY ORDERED that Belinda K.'s motion to shorten time is DENIED without
4 prejudice to her filing another motion on or before February 2, 2011 explaining why HIPAA does
5 not apply to these subpoenas or any other reason why shortening time is nevertheless appropriate.

6 IT IS FURTHER ORDERED that Defendants will serve the healthcare providers that
7 received the subpoenas at issue with a copy of this order, which notes Defendants'
8 acknowledgment that "no records will be produced on February 2, 2011." (See Opp'n at 3:7.)

9
10 Dated: February 1, 2011

11 
12 PAUL S. GREWAL
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28