

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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| HUYEN L. NGUYEN, |) | Case No. 5:13-cv-01847-LHK-PSG |
| |) | |
| Plaintiff, |) | ORDER GRANTING-IN-PART |
| v. |) | NGUYEN’S MOTION TO COMPEL |
| |) | |
| JOHN M. MCHUGH, |) | (Re: Docket No. 68) |
| |) | |
| Defendant. |) | |

Before the court is Plaintiff Huyen L. Nguyen’s motion to compel.¹ Defendant John M. Mchugh opposes. Pursuant to the local rules, the court finds this motion suitable for disposition on the papers.² After considering the arguments, the court GRANTS the motion, but only IN-PART, as set forth below:

- McHugh shall produce Nguyen’s unredacted patient and appointment records from December 8, 2009 with a confidentiality designation pursuant to the protective order in this case. Because those records are relevant under Rule 26, and the court is persuaded the protective order adequately safeguards the patient privacy rights implicated, production is warranted.

¹ See Docket No. 68.

² See Civil L.R. 7-1(b).

- 1 • Because McHugh concedes the December 29, 2009 records are relevant and may be
2 produced subject to the protective order,³ McHugh shall produce an unredacted copy of
3 (1) the memorandum for record (“MFR”) concerning Nguyen from December 29; (2) the
4 appointment records for the clinic on that date; (3) the records of procedures performed and
5 treatment notes from Nugyen, Dr. Wong and Dr. Stewart concerning the procedures
6 referenced in the MFR and (4) the time records of Felicia Colton.⁴
- 7 • Because the disputed date(s) where meetings regarding insourcing are clearly relevant,
8 McHugh shall produce appointment and scheduling records for the POM dental clinic for
9 March and April 2010.
- 10 • Subject to the presiding judge’s discretion, McHugh may not introduce records requested
11 for, but not produced, at trial.
- 12 • McHugh shall produce operating procedures, rules, and policies incorporated by reference
13 in the disputed contract. McHugh may discharge his production obligation merely by
14 reference to a publicly-accessible internet source. But if he elects to do so, and again
15 subject to the presiding judge’s discretion, McHugh may not subsequently challenge the
16 authenticity of such documents.
- 17 • McHugh may elicit testimony at trial that there were additional POM applicants at the time
18 of the insourcing. The absence of supporting documentation to support any percipient
19 witness’s claim will fuel a healthy cross. The court is not persuaded that any additional
20 spoliation sanctions are warranted.

21 **IT IS SO ORDERED.**

22 Dated: July 28, 2014

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PAUL S. GREWAL
United States Magistrate Judge

29 ³ See Docket No. 73 at 4 n.1.

30 ⁴ Although Nguyen did not request Colton’s time records in her moving papers, the court is
31 persuaded that this additional, limited production is warranted.