

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHARLES DES ROCHES, et al.,
Plaintiffs,
v.
CALIFORNIA PHYSICIANS' SERVICE, et
al.,
Defendants.

Case No. [5:16-cv-02848-LHK](#) (HRL)

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT NO. 1**

Re: Dkt. No. 141

In this certified class action, plaintiffs claim that their health care plans provided for mental health and substance abuse treatment that was medically necessary as defined by generally accepted professional standards, but that the defendants evaluated claims for such treatment under “Guidelines” that were far and away more restrictive (thus denying claims that perhaps should have been granted). Among other relief, plaintiffs seek an injunction requiring that their claims be reevaluated under proper guidelines.

The parties filed Discovery Dispute Joint Report (“DDJR”) #1 on July 20. In it, the Blue Shield defendants seek an order preventing plaintiffs from deposing Amanda Flaum, a former Blue Shield executive.

The Blue Shield defendants say that Ms. Flaum was Blue Shield’s Vice President of Medical Management from 2013 to 2016, overseeing a department that managed medical

1 necessity determinations (including mental health and substance abuse). They assert that she
2 “...authored very few relevant messages...” and her “...substantive emails contained only high-
3 level statements...” They say that plaintiffs have already deposed knowledgeable people below
4 her in the hierarchy. And, now she has a new job as the COO of a Blue Shield subsidiary (Care
5 1st), and does not have the time for this. She is, they claim, an “apex” executive, who should not
6 be subjected to the possible harassment of a deposition unless her testimony is unique and
7 unavailable elsewhere. Defendants argue that plaintiffs fail to make the necessary showing.

8 Plaintiffs say Ms. Flaum was at all times a member of and for a time the chairperson of the
9 Blue Shield Utilization Management Committee (“UMC”), the committee that approved adoption
10 of the very Guidelines that are the heart of this lawsuit. She was, they suggest, not a hands-off
11 manager, but was closely involved in overseeing the review and approval of the Guidelines. She
12 attended meetings where denials and appeals of medical necessity determinations were considered.
13 Plaintiffs appear to want to probe what she knew and did not know; what she questioned and what
14 she did not; exactly what was her degree of involvement in the adoption and application of the
15 accused Guidelines.

16 First off, the court, on balance, is not persuaded that Ms. Flaum is an apex executive.
17 Defendants do not explain where she was in the corporate hierarchy. Were there Senior and
18 Executive Vice Presidents? How many other Vice Presidents were there? How many people did
19 she manage? (The court gives little weight to the fact that she is now the COO of a subsidiary of
20 Blue Shield.) Even if she were an apex executive, the plaintiffs have satisfied the court that her
21 testimony could be unique on account of her role as a decision maker on the Guidelines’ adoption
22 and application. The court sees no hint of any intention to harass her, and the rationale for ever
23 giving a “pass” to a high level executive is to avoid harassment through a needless deposition.
24 The plaintiffs make a satisfactory case for a brief deposition to explore her role in the matters at
25 issue here. A three hour deposition is warranted.

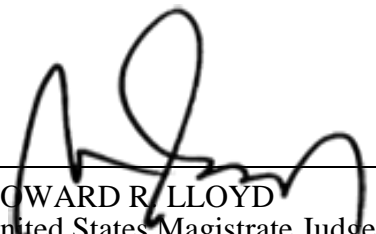
26 The court does not know how long this discovery dispute simmered before it was
27 presented to the court. The presiding judge established a fact discovery cutoff of July 28, and the
28 parties’ filing of this DDJR 8 days before the cutoff did not, as a practical matter, leave time for

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both the court to rule and for the deposition to take place. The court requires the deposition to take place forthwith, by July 28 if that is feasible, but in any event no later than 10 days from the date of this order.

SO ORDERED.

Dated: July 26, 2017



HOWARD R. LLOYD
United States Magistrate Judge