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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LISA STONE,
Plaintiff,
v.
ABBOTT LABORATORIES,
Defendant.

Case No. 13CV2252-WQH(JMA)
**ORDER RE: JOINT MOTION
FOR COURT ORDER
REQUIRING RADY CHILDREN'S
HOSPITAL - SAN DIEGO TO
PRODUCE DECEDENT
BRITTANY FERNANDEZ'S
MEDICAL RECORDS [DOC. NO.
33] AND DESIGNATING ALL
RECORDS PRODUCED BY
RADY AS CONFIDENTIAL AND
SUBJECT TO THE PROTECTIVE
ORDER**

On November 3, 2014, Plaintiff Lisa Stone ("Stone") and Defendant Abbott Laboratories ("Abbott") filed a Joint Motion for Court Order Requiring Rady Children's Hospital - San Diego ("Rady") to Produce Decedent Brittany Fernandez's ("Fernandez") Medical Records. Doc. No. 33. After an unsuccessful attempt by the parties to informally obtain the medical records from Rady, on October 27, 2014, Abbott issued a subpoena to Rady formally requesting production of Fernandez's complete medical records. *Id.*, Ex. C. The deadline for Rady to produce responsive documents or otherwise respond to the subpoena is November 17, 2014.
Id.

1 The parties report “[g]iven Rady’s reliance on HIPPA (*sic*) [the Health
2 Insurance Portability and Accountability Act is hereafter referred to as
3 “HIPAA”], it is doubtful that Rady will respond to the subpoena as HIPAA
4 only permits disclosures in response to a subpoena if the hospital notifies
5 the person who is the subject of the information (i.e., decedent Brittany
6 Fernandez) about the request, so that person has a chance to object to the
7 disclosure, or seek a qualified protective order for the information from the
8 court. See 45 C.F.R. § 164.512(e)(1)(ii).” This is a misstatement of HIPAA,
9 which in pertinent part states:

10 (e) Standard: Disclosures for judicial and administrative
11 proceedings.

12 (1) ***Permitted disclosures. A covered entity may disclose
13 protected health information in the course of any
14 judicial or administrative proceeding:***

15 (I) In response to an order of a court or administrative
16 tribunal, provided that the covered entity discloses only
17 the protected health information expressly authorized by
18 such order; or

19 (ii) ***In response to a subpoena, discovery request, or
20 other lawful process, that is not accompanied by an
21 order of a court or administrative tribunal, if:***

22 (A) The covered entity receives satisfactory assurance, as
23 described in paragraph (e)(1)(iii) of this section, from the
24 party seeking the information that reasonable efforts have
25 been made by such party to ensure that the individual
26 who is the subject of the protected health information that
27 has been requested has been given notice of the request;
28 ***or***

(B) ***The covered entity receives satisfactory assurance,
as described in paragraph (e)(1)(iv) of this section,
from the party seeking the information that
reasonable efforts have been made by such party to
secure a qualified protective order that meets the
requirements of paragraph (e)(1)(v) of this section.***

...

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section,
a covered entity receives satisfactory assurances from a
party seeking protected health information, if the covered
entity receives from such party a written statement and accompanying document

1 (A) The parties to the dispute giving rise to the request for
2 information have agreed to a qualified protective order
3 and have presented it to the court or administrative
tribunal with jurisdiction over the dispute; or

4 (B) The party seeking the protected health information has
5 requested a qualified protective order from such court or
administrative tribunal.

6 45 CFR § 164.512. (*emphasis added*)

7 At the parties' request, a protective order ("Protective Order") was
8 entered by the Court on January 27, 2014. Doc. No. 17. Pursuant to the
9 Protective Order, documents produced during discovery and designated as
10 "Confidential Information" are to be handled in a manner that is consistent
11 with the protections called for by 45 CFR § 164.512 (e)(1)(v), which states:

12 (v) For purposes of paragraph (e)(1) of this section, a
13 qualified protective order means, with respect to
14 protected health information requested under paragraph
15 (e)(1)(ii) of this section, an order of a court or of an
administrative tribunal or a stipulation by the parties to the
litigation or administrative proceeding that:

16 (A) Prohibits the parties from using or disclosing the
17 protected health information for any purpose other than
the litigation or proceeding for which such information
was requested; and

18 (B) Requires the return to the covered entity or destruction of
19 the protected health information (including all copies
made) at the end of the litigation or proceeding.

20
21 *Id.*; See also Protective Order, Ex. A, §§ 3, 4, 7 & 20.

22 Accordingly, all information, including any documents and
23 electronically stored information ("ESI"), produced by Rady in response to
24 the subpoena issued by Abbott on October 27, 2014, shall be designated
25 as "Confidential Information" and shall be subject to the Protective Order
26 previously entered in this case. The Court further orders Abbott to serve
27 Rady with a copy of this Order, the Protective Order, and a written
28 statement, as contemplated in 45 CFR § 164.512 (e)(1)(iv), so that Rady

1 may produce Fernandez's medical records in compliance with its
2 obligations under HIPAA.

3 **IT IS SO ORDERED.**

4 DATED: November 5, 2014

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6 Jan M. Adler
7 U.S. Magistrate Judge

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