

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-02303-WYD-MJW

RALPH MERCADO,

Plaintiff,

v.

MR. J. WADAS, et al.

Defendants.

**ORDER APPOINTING
BRUCE N. SUCKLING, M.D., TO PERFORM PULMONARY MEDICAL
EXAMINATION AND EVALUATION OF PLAINTIFF RALPH MERCADO PER THE
SETTLEMENT AGREEMENT OF AUGUST 18, 2010 (DOCKET NO. 267)**

Entered by Magistrate Judge Michael J. Watanabe

This matter was before the court for settlement conference on August 18, 2010 (docket no. 267). At the settlement conference, the parties were able to reach a full and complete settlement of all issues in the case, and the settlement agreement was placed on the record before Magistrate Judge Watanabe. See transcript of settlement (docket no. 286-1). Per the settlement agreement, the Government was to provide to this court with a list of five pulmonologists who could do a pulmonary evaluation (examination) on Plaintiff Mercado as to his lung condition and asthma condition, and Magistrate Judge Watanabe would be responsible for selecting and appointing one out of the five pulmonologists to do such a pulmonary evaluation (examination) per the settlement agreement. The Government did provide to Magistrate Judge Watanabe the names and qualifications (CVs) of five pulmonologists. The parties further agreed as part of the

settlement that Plaintiff Mercado would undergo this evaluation (examination), and the pulmonologist would provide to this court a written report outlining Plaintiff Mercado's current medical pulmonary diagnosis and provide to this court with a recommended course of treatment, if any. The Defendants have agreed, per the settlement agreement, to pay the cost for such evaluation (examination) and have agreed to follow any recommended treatment for Plaintiff Mercado that is recommended by the pulmonologist in his report.

Following the settlement conference on August 18, 2010, Plaintiff Mercado filed a motion captioned "The settlement agreed upon on August 18, 2010 can not legally be approve [sic] nor finalize [sic] by the court on September 3, 2010," which this court viewed as a motion for an order to not enforce settlement agreement (docket no. 273). Per docket no. 274 by Chief Judge Daniel, the above motion (docket no. 273) was referred to Magistrate Judge Watanabe for report and recommendation. On September 17, 2010, Magistrate Judge issued his report and recommendation on this motion (docket no. 273). See docket no. 278. On November 10, 2010, Chief Judge Daniel issued an Order Adopting and Affirming Magistrate's Recommendation. See docket no. 291. In that Order, Chief Judge Daniel directed Magistrate Judge Watanabe to promptly select a pulmonologist to examine Plaintiff Mercado consistent with the settlement agreement. See docket no. 291 at 8.

This court has reviewed the qualifications from the five pulmonologists and determines that Bruce N. Suckling, M.D., is medically qualified to conduct an independent pulmonary examination and evaluation of Plaintiff Mercado and is willing to provide to this court a written report containing Mr. Mercado's current pulmonary

medical condition, current medical diagnosis, and recommended treatment, if any, to the court within ten days following his evaluation and examination of Mr. Mercado. The court did contact Dr. Suckling to determine whether he is willing to accept this appointment in the above-mentioned capacity, and Dr. Suckling informed the court that he is willing to accept such an appointment. Furthermore, the court went over with Dr. Suckling all of the names of all of the parties to this lawsuit to determine if Dr. Suckling had any conflicts of interest in accepting this appointment, and after going over all of names of each party to this lawsuit, Dr. Suckling informed the court that he does not have any conflict of interest with any of the parties to the lawsuit or with the court.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law, this court **ORDERS**:

1. That this court has selected and appoints Bruce N. Suckling, M.D., to evaluate and examine Plaintiff Ralph Mercado per the settlement agreement. Dr. Suckling is directed by this court to perform a pulmonary examination and evaluation of Mr. Mercado at his office and conduct any medical tests that may be necessary in order to provide to this court with a current pulmonary evaluation, diagnosis, and recommended treatment plan, if any. Dr. Suckling will file with the court his written report within 10 working days following his examination and evaluation of Mr. Mercado, and such report shall contain a current pulmonary medical diagnosis and recommended

treatment, if any. This written report shall be mailed to Michael J. Watanabe, United States Magistrate Judge, Alfred A. Arraj United States Courthouse, 901 19th Street, Courtroom A-502, Denver, Colorado 80294; and

2. That Defendants shall forthwith contact Dr. Suckling to clear a date and time for such examination and evaluation to take place. Defendants shall be responsible for transporting Mr. Mercado to Dr. Suckling's Office for such examination and evaluation. Defendants shall contact Dr. Suckling's office and make arrangements for payment to Dr. Suckling based upon the settlement agreement.

Done this 10th day of November 2010.

BY THE COURT

S/ Michael J. Watanabe
MICHAEL J. WATANABE
U.S. MAGISTRATE JUDGE