

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 10-cv-01144-REB-BNB

THE ARC OF THE PIKES PEAK REGION, as legal guardian for Angela Bream,  
Greg Catlett, Gordon Cummins, Vera Guion, Mary Rodgers and Tino Valencia,  
SHARON HARRISON and MICHELLE BOWER, as legal guardians for Randy Bower, and  
KARLA DIAZ and CELESTINO PAUL DIAZ, as legal guardian for Felipe Cantrell Cervantes,

Plaintiffs,

v.

NATIONAL MENTOR HOLDINGS, INC., d/b/a/ The Mentor Network, its successor and its  
assignees,  
REM COLORADO, INC., its successors and assignees; and  
JAN BLOSSER,

Defendants.

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**DISCLOSURE ORDER**

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This matter arises on **Defendants' Motion for Order Confirming That Defense Counsel May Conduct *Ex Parte* Witness Interviews of Plaintiffs' Treating Healthcare Providers** [Doc. # 74, filed 11/18/2010] (the "Motion"). I held a hearing on the Motion and took it under advisement. The Motion is GRANTED as specified.

This action is brought by the legal guardians of the following disabled persons: Angela Bream, Greg Catlett, Gordon Cummins, Vera Guion, Mary Rodgers, Tino Valencia, Randy Bower, and Felipe Cantrell Cervantes (the "Wards").

The defendants seek leave to conduct *ex parte* interviews of certain of the Wards' health care providers subject to a disclosure order<sup>1</sup> entered pursuant to 45 C.F.R. § 164.512(e)(1)(i); Samms v. District Court, 908 P.2d 520, 524-29 (Colo. 1995); and Reutter v. Weber, 179 P.3d 977, 979 (Colo. 2007). Following the hearing, I allowed the plaintiffs an opportunity to identify any areas of health care where they claimed either (1) that there is residually privileged health care information or (2) that the health care information is not at issue in this case, is irrelevant, and should be excluded from the scope of this Disclosure Order. See Order [Doc. # 89] at p. 2. That opportunity notwithstanding, the plaintiffs have failed to identify any health care information that should be excluded.

Section 164.512(e)(1)(i), 45 C.F.R., provides that a covered entity may disclose protected health information without the written consent of an individual where the information is sought in connection with a judicial proceeding and “[i]n response to an order of a court . . . provided that the covered entity discloses only the protected health information expressly authorized by [the] order.” This is a court order pursuant to 45 C.F.R. 164.512(e)(1)(i) allowing the disclosure of health information without the written consent of the individual.

In Samms v. District Court, the Colorado Supreme Court held:

When a patient initiates a civil action and by alleging a physical or mental condition as the basis for a claim of damages injects that issue into the case, the patient thereby impliedly waives his or her physician-patient privilege with respect to that medical condition.

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<sup>1</sup>I adopt the reasoning of Judge Waxse in Brigham v. Colyer, 2010 WL 2131967 \*2 (D. Kan. May 27, 2010), which distinguishes a disclosure of protected health information made in response to a court disclosure order pursuant to 45 C.F.R. § 164.512(e)(1)(i), on the one hand, from disclosure made in response to a subpoena, discovery request or other lawful process and subject to a qualified protective order pursuant to 45 C.F.R. § 164.512(e)(1)(ii), on the other hand.

\* \* \*

[A] trial court has authority to permit a defense attorney to conduct informal interviews with a plaintiff's treating physicians in the absence of the plaintiff or the plaintiff's attorney about matters not subject to a physician-patient privilege so long as the plaintiff is given reasonable notice of such interviews to permit the plaintiff or the plaintiff's attorney to attend or to take other appropriate steps to ensure that privileged information will not be disclosed.

908 P.2d at 524, 529.

The Colorado Supreme Court further explained this holding in Reutter v. Webber:

Samms did not create a blanket rule that a plaintiff is always entitled to attend an interview of a non-party medical provider. Instead, it held that the trial court should take appropriate measures to protect against the divulgement of residually privileged information, and that allowing the plaintiff to attend the interview is the preferred measure where there is a high risk that residually privileged information will be divulged.

179 P.3d at 979.

The defendants seek a disclosure order allowing them to conduct *ex parte* interviews of the Wards' health care providers identified on Exhibit A (the "Subject Providers") concerning all care provided to the Wards, or any of them, for the time period January 1, 2002, to the present. The plaintiffs concede that all care provided during that time period is relevant to the Wards' claims and have failed to identify any residually privileged information which should be excluded from the scope of this Disclosure Order.

The plaintiffs, as guardians, have placed the medical conditions of the Wards at issue by filing this action. I find that all health care provided to the Wards by the Subject Providers from January 1, 2002, to the present is relevant to the claims asserted or is reasonably calculated to lead to the discovery of admissible evidence, and is discoverable. I find that the Subject

Providers have no residually privileged information. Consequently, I find that there is no reason to allow the plaintiffs, their Wards, or their counsel to attend the defendants' interviews of the Subject Providers.

By filing the Motion, the defendants gave the Wards and their guardians reasonable notice of the interviews they intend to conduct. Also by filing the Motion, the defendants provided the Wards and their guardians with an opportunity to take appropriate steps--by resisting the Motion, filing a motion for protective order, or otherwise--to ensure that irrelevant or residually privileged information is not disclosed. The defendants have satisfied the notice obligation imposed by Samms, 908 P.2d at 526 (requiring that the plaintiff must be given reasonable notice of any proposed informal interviews).

This Order allows the defendants and their counsel to conduct *ex parte* interviews of the Subject Providers. The Subject Providers are not required to meet with or talk to the defendants or their counsel, however.

IT IS ORDERED that the Motion [Doc. # 74] is GRANTED as specified below:

(1) The Wards, through their guardians, have waived the physician-patient privilege with respect to any and all health care services provided to the Wards by the Subject Providers from January 1, 2002, to the present;

(2) Pursuant to 45 C.F.R 164.512(e)(1)(i), the Subject Providers are authorized, without the written consent of the Wards or their guardians, to disclose to defendants and their counsel the Wards' health information for the period January 1, 2002, to the present;

(3) The defendants and their counsel are authorized to conduct *ex parte* interviews of the Subject Providers, without the written consent of the Wards or their guardians, but the

Subject Providers are not required to meet with or talk to the defendants or their counsel;

(4) All health care information disclosed pursuant to this Disclosure Order is and shall be subject to the Protective Order [Doc. # 70]; and

(5) The defendants shall provide a copy of this Disclosure Order to each Subject Provider at least three days prior to interviewing the Subject Provider.

Dated December 22, 2010.

BY THE COURT:

  
United States Magistrate Judge

## EXHIBIT A TO DISCLOSURE ORDER

### Subject Providers

#### Angela Bream

Charles Higgins, M.D. (PCP)  
Lawrence Adams, M.D. (neurology)  
Ruth Ryan, M.D.  
John Robert Swenson, DPM (podiatry)  
Debra Mascarenas (Goodwill)  
Aginah DeBerry, D.O. (PCP)  
Timothy Stacey, DDS, Dentist  
Peter McIntyre, DDS, Dentist  
Dr. McHugh, Hearing  
Dr. Gehler, Vision  
Mindy Siegel, M.D., Orthopedics  
Dr. Wiertman, Endocrinologist  
Sandra Yaney, RXN, MN, MPH  
Dr. Robert Vogt

James Salbenblatt, MD  
Jonathan P. Weston MD  
Dr. Michael R. Bowen  
Dr. Kelly H. Shimokusu  
Dr. Kimble  
Kinesa Lindner, LPN  
Kipp Elaine Henning, DPM  
Dr. Ferguson  
Robert H. Gibbs, MD  
Dr. Laura Kissell  
Joyce Vernon, RN  
Renee Barall-Inman, N.P.  
Dr. Gregg, OB/Gyn

#### Greg Catlett

Charles Higgins, M.D. (PCP)  
Sean O'Donnell, M.D. (PCP)  
Bhaktasharan Patel, M.D. (GI specialist)  
Chuck Schoephoerster, PA  
Peter McIntyre, DDS  
Melissa Tada, OD  
Michael Taravella, M.D.  
John Robert Swenson, DPM (podiatry)  
Dr. Cannon  
Kip Elaine Henning, DPM  
Lee Blatt, M.D.  
Kim Green, LMT  
Dave Benson, OTR  
J. Maggie Mueller, OTR  
Janice Stoddard, PT  
Richard Loehr, M.D.  
Richard Hartl, M.D.  
Charles Webb, M.D.  
Douglas Cross, M.D.  
Karl Wolff, M.D.  
Stacy O. Greenspan, D.O.  
Steven Mohnssen, M.D.  
Pratheep Arora, M.D.  
W. Michael Pitman, M.D.  
Dugard Taylor, M.D.

Karen Merrill, MSRD  
Christi Clay, Psychiatrist  
Anna Spurgeon  
L. Cheryl Lambert  
Acosto Vilacencia  
Hennyon Marshall  
Carolun Johnson, R.N.  
J. West, R.N.  
C. Heltern, R.N.  
M. Murphy, R.N.  
Neimyon Marks  
D. Mercer, LPN  
Shari Fiches, R.N.  
Joyce Vernon, R.N.  
Linda Schmitz  
Karen Gobel, LPN  
Meg Casey, R.N.  
Mary Ann Stambaugh, PTA  
Dr. Gifford  
Gregory Collins, M.D.  
Jonathan Velez, M.D.  
Douglas Sharp, D.O.  
Lynne Stempien, M.D.  
Charles Wennogle, M.D.

## EXHIBIT A TO DISCLOSURE ORDER

### Subject Providers

#### Gordon Cumming

Aginah DeBerry, M.D. (PCP)  
Charles Higgins, M.D. (PCP)  
Thomas Bowser, M.D. (neurology)  
Dr. Peter A. McIntyre  
Dr. Wahl  
Dr. Hockensmith (Genitourinary)  
John Robert Swenson, DPM (podiatry)  
Dr. Gehler (Optometry)  
Dr. Michelle L. Reamise (Optometry)  
Dr. Newcomer (Cardiovascular)

Dr. Thomas Bower (Neurology)  
Dr. Sickbert  
Lisa Shurgot, SLP (Speech Therapy)  
Joyce Vernon, R.N.  
Shari Fiches, RN  
C. Johnston, RN  
Dr. McHugh (ears)  
Dr. Phelps (follow-up on femur operation)  
S. McCormick, NP (Emergicare for  
bronchitis)

#### Mary Rodgers

Aginah DeBerry, M.D. (PCP)  
Charles Higgins, M.D. (PCP)  
Sandra Yaney, FNP  
Melissa McGee  
Sarah Owen  
Jennifer Williams, M.S.  
Dr. Westcott  
Michelle Moran, M.D.  
Mciej Oksiak, PT  
David Wolf, M.D.  
Larry Shores, M.D.  
Natalie Hogan, M.D.  
Bonnie Goetz

Jennifer Williams, M.S.  
Melissa Megee  
Dr. Westcott  
Dola Dennis  
Peter McIntyre, DDS  
Michael Billingsly, DDS  
Dr. Eric Medavilla  
James Berwick, DDS  
Michael Billingsly, DDS  
Dr. Tim Reese  
Debra Baker, APRN, CNP  
Dr. Bhatti (neurosurgery)

#### Tino Valencia

Ruth Ryan, M.D. (psychiatry)  
Dr. Arthur Egelman  
Charles Johnson, M.D. (PCP)  
Laurence Lopez, M.D.

Michael Carrizal, D.O.  
Mary Jo Dase  
Peter McIntyre, DDS  
Dr. Kulman (optometry)

#### Felipe Cervantes

Sean O'Donnell, M.D. (PCP)  
Michael Derosé, D.D.S.  
Dr. Gravbert  
Robert L. Carlisle, M.D.  
Michael DeRose, DDS  
John Robert Swenson, DPM (podiatry)  
Mindy J. Siegel  
Dr. Melissa Tada  
Laurence J. Cohen, D.O.  
Marilyn J. Gifford, M.D.

Dr. Everson  
Linda Schmitz  
Joyce Vernon, R.N.  
Karen A. Merrill  
Richard B. Madsen, Ph.D., Clinical  
Psychologist  
Richard E. Loehr, M.D.  
Paul V. Connaughton, M.D.  
Bruce Campbell

## EXHIBIT A TO DISCLOSURE ORDER

### Subject Providers

#### Vera Guion

Aginah DeBerry, M.D. (PCP)  
Dana Bennett, M.D. (PCP)  
Scott F. Sickbert, M.D.  
Karen Campbell, M.D. (PCP)  
Dianne DeMallie, M.D. (psychiatry)  
Ruth Ryan, M.D. (psychiatry)  
Sandra Yaney, N.P.  
Thomas Bowser, M.D. (neurology)  
Erik Anderson, M.D.  
Rick S. Pionkowski, M.D.  
Colleen Eisman, R.N.  
John E. Ho, M.D.  
Deanne L. Veselka, M.D.  
Dr. Melissa Tada  
Dr. Tom Clyde (optometry)  
Dr. Davidson  
Dennis P. Driscoll, DDS  
Peter McIntyre, DDS  
Dr. Patel, M.D. (Gastroenterologist)  
Melissa A. Tada, O.D. (Optometry)  
Dr. Tom W. Clyde (Optometry)  
Dr. C. Erik Anderson  
Karen Merrill, MSRD  
Dr. Jon Westcot  
Dr. Harnish  
Dr. Marilyn Warren  
Dr. Chiquita L. Isom  
Dr. Randolph Maul  
Scott B. Woody, D.O.  
Mary Theresa Cole  
Diane Butler, OTR  
Cari Vermillion, CNA  
Dr. Scott F. Sickbert  
MaryAnn Stambaugh, PTA  
M. Bjork, M.D.  
Karen Gobel, LPN  
Lisa M. Bonwell, M.D. (Memorial Hospital, February 2008)  
Dr. Evilser (Memorial Hospital, February 2008)  
William B. Kimble (Memorial Hospital, February 2008)  
C. Erik Anderson, M.D. (Memorial Hospital, February 2008)  
Stacy Greenspan (Memorial Hospital, February 2008)  
Paul Connaughton (Memorial Hospital, February 2008)  
Karl Wolff (Memorial Hospital, February 2008)  
Dr. Warren Goldstein (Memorial Hospital, February 2008)  
Dr. Monte Golditch (Memorial Hospital, February 2008)  
Dr. Joseph W. Ziegler (Memorial Hospital, February 2008)  
David R. Steinbruner, MD  
Dr. John E. Ho  
Thomas Bowser  
Dr. Mason B. Kates  
Timothy W. Wyse  
John R. Tyler, D.O.  
Jeffrey W. Ross, M.D.  
Douglas Shaeffer, M.D.  
John Campbell, M.D.  
Dr. Deanne L. Veselka  
Angel Brock, RN  
Jean Breem



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### Subject Providers

#### Randy Bower

Charles Higgins, M.D. (PCP)	Lori McGavran, Ph.D. (Genetics)
Aginah DeBerry, M.D. (PCP)	Linda Schmitz
Ed Schmitt, M.D. (PCP)	Meg Evans, OTR
Roger Sung, M.D. (musculoskeletal)	Meg Casey, OTR
Lawrence Adams, M.D. (neurology)	Joyce Vernon, R.N.
Sana Bhatti, M.D.	A. Spurgeon
Peter McIntyre, DDS	Dorothy Bennett, R.N.
Timothy Stacey, DDS	J. Renard
Dr. Eugene McHugh	Mary Ann Stambaugh
Wallace Larson, M.D.	Acosto Villacencia
Michael Feign, M.D.	Mary Ann Stambaugh, PTA
John Robert Swenson, DPM (podiatry)	John Torrent, M.D.
Lisa Shurgot, SLP	Dorothy Bennett, R.N.
Regina Donley, OT	D.C. Mayes, M.D.
Karen Merrill, MSRD	Bhaktasharan Patel, M.D.
Dr. William Munson (endocrinology)	Edward Schmitt, M.D.
Dr. David Manchester (endocrinology)	Tammy Shields, M.D.
Bhaktasharan Patel, M.D. (Gastroenterology)	Charles Webb, M.D.
Joseph Lemmons, M.D.	Mark Storm, M.D.
Phillip Gunther, M.D.	William Kimble, M.D.
Robert Crowley, MA	Gregory Tietz
Anthony Young	James Garland
Joan Solis, QMRP	Oscar Arguello-Rudin, M.D.
John Rodriguez	J. Patrick Stout, M.D., Pathology
Kristen Nelson	Dr. Gossett
Ramona Chaney	Patricia Fodor, M.D.
Carol Bemends	Harry Anderson, M.D.
Mark Schomack, OTR	David Ascarelli, M.D.
Herb Brockman	John Baer, M.D.
Linda Kehemeir	Randall Bjork, M.D.
Don Thompson	Joseph Clark, M.D.
Kelly Cooper	Mel Robinson, M.D.
Brenda Sampson	Timothy Jamison, M.D.
Sary Hilty	Julie Kiley, M.D.
Susan Duncanson	Jean Keane, M.D.
Carolyn DeSalvo	Dr. Evilsizer
Karen Bartlett	Dr. Galloway
Thomas Higginbotham, DO	Richard Miller, M.D.
C. Bartlett, M.D.	John Torrent, M.D.
	Paul Safford, PAC
	Tom Tafoya, M.D.

## EXHIBIT A TO DISCLOSURE ORDER

### Subject Providers

Richard Heitman, MD (Catlett)  
William G. Herrera, MD (Catlett, Rodgers)  
Charles Patrick Higgins, DO (Bower, Cumming)  
Linnea C Hughes, PA (Bower)  
Steven R Hughes, MD  
Chiquita Isom, CFNP  
Mark J. James, MD (Rodgers)  
Douglas Jeffers, PA  
Charles Johnson, DO (Valencia)  
Dr. Jost (Catlett)  
M Ben Kates, MD (Bream, Catlett, Rodgers)  
Julie M Kiley, MD (Catlett, Cumming)  
William K Kimble, MD  
William F. Kinn, MD  
Todd Knauf, PA (Bower)  
Martin Kron, MD (Bream)  
Mark Alan Levstik, DO  
Michael Loew, MD (Catlett, Rodgers)  
Lawrence Lopez, MD (Valencia)  
Matthew A Lowery, MD  
David K. Manchester, MD (Bower)  
Cindy McCollom, PAC  
Peter A. McIntyre, DDS  
Dr. Munson (Bower)  
Matthew T Murray, MD  
Ruth Mize Myers, MD (Valencia, Guion)  
Grace Nweke, MD  
Dr. Sean C. O'Donnell (Catlett, Cervantes)  
Herald Ostovar, MD (Rodgers)  
Dr. Leticia M Overholt  
Ashok R Patel, MD  
Dr. Bhaktasharan Patel (Catlett, Guion)  
Dernis A. Phelps, MD (Cumming)  
Samuel Piedad Jr., MD (Bream)  
Ronald L Rains, MD (Guion)  
Tim Reese, OD  
Linda Schmitz, MSPT (Bower)  
Charles Schoephoerster, PA, MPH (Catlett, Cervantes)  
Douglas W. Sharp, DO (Catlett)  
Phillip Shriver, MD  
Steven P Sloan, MD  
Betty Sparks, WH-CNP  
Dr. Donald Spradlin  
Timothy F. Stacey, DDS (Bower, Bream)  
Linda R. Sturtevant, MD  
Dr. Sung (Bower)  
Dr. J.R. Swenson  
Melissa A. Tada, OD (Guion)  
Gregory C Tietz, DO (Bower)  
Gregory S Timm, MD  
Jonathan A Velez, MD  
Joyce E. Vernon, RN  
Brock C. Vickery, MD  
Richard Walsh, MD (Cumming)  
Charles W. Webb, MD (Catlett, Rodgers)  
Eric R. Weidman, MD (Catlett)  
Sandra Yaney, RN (Bream, Guion)  
Susan Zeller, MME, MT-BC