

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

PETER LATTNER, JR.,  
As Personal Representative of the  
Estate of PETER LATTNER, SR.,

Plaintiff,

vs.

Case No.: 8:03-cv-00793-EAK-MSS

UNITED STATES OF AMERICA  
WEST ORANGE HEALTHCARE DISTRICT  
d/b/a HEALTH CENTRAL HOSPITAL,  
MUQUEET M. SIDDIQUI, M.D. and  
MUQUEET M. SIDDIQUI, M.D., P.A.,

Defendants.

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**WEST ORANGE HEALTHCARE DISTRICT,  
D/B/A HEALTH CENTRAL HOSPITAL'S  
RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANT,  
WEST ORANGE HEALTHCARE DISTRICT D/B/A HEALTH CENTRAL HOSPITAL,  
TO COMPLY WITH THE COURT'S ORDER DATED JANUARY 5, 2006**

COMES NOW the Defendant, WEST ORANGE HEALTHCARE DISTRICT, D/B/A HEALTH CENTRAL HOSPITAL, and responds to Plaintiff's Motion to Compel and would show as follows:

1. This Defendant has not violated the Court's order of January 5, 2006. Indeed, this Defendant has cooperated with opposing counsel by previously scheduling the depositions of its employees as requested by Plaintiff and providing names and last known addresses of all former employees whose depositions have been requested by Plaintiff. The scheduled depositions were subsequently cancelled by Plaintiff and only one former employee was scheduled and deposed by Plaintiff.

2. Pursuant to the Court's order of January 5, 2006, the Court authorized a total of thirteen depositions of fact witnesses that Plaintiff could take. Further, the Court ordered that to the extent a corporate witness needs to be designated to provide information concerning subject matters such as "person with most knowledge regarding staffing" and "person with most knowledge regarding ER policies and procedures," Defendant may offer as few or as many persons as needed to provide that information and, in the event more than one person was required to provide complete answers, the depositions shall count as a single deposition among the thirteen. (See Exhibit 1)

3. At that time, Plaintiff had already taken the depositions of nine fact witnesses and subsequently did take a tenth fact witness deposition on January 26, 2006 as also noted in said order. Thus, on January 26, 2006, Plaintiff had already taken the tenth fact witness, leaving her with three more to take pursuant to the Court's order.

4. Plaintiff's motion and memo assert that after the Court's order of January 5, 2006, Plaintiff followed up several times requesting the identities and deposition dates for these hospital personnel as referenced in composite Exhibit E to her memorandum. Most of the letters in that exhibit were written prior to the court order, while the remainder and other letters and deposition notices not included in exhibits by Plaintiff show this Defendant's full compliance with the order.

5. Plaintiff's composite Exhibit E starts with a letter from counsel for Health Central dated May 1, 2005, some eight months prior to the Court's order. In order to produce the appropriate corporate representatives and/or other personnel for deposition, clarification of the request was sought by counsel for Health Central as reflected in that letter.

6. Plaintiff's second letter of the composite exhibit is also dated prior to the Court's Order, i.e., June 7, 2005, some seven months previous. Plaintiff's letter did not clarify the issues of inquiry intended for the hospital's (1) ER supervisor, (2) charge nurse or manager, (3) director of

nurses, and (4) ER medical director, but did state that in addition to these depositions, Plaintiff wished to depose the person with the most knowledge regarding “ER staffing” and “ER policies and procedures.”

7. Plaintiff’s third letter of the composite exhibit likewise predates the Court’s Order, i.e., July 27, 2005, some five and a half months prior. Similarly, Plaintiff’s fourth letter of composite Exhibit E is dated September 9, 2005, some four months prior to the Court’s Order of January 5, 2006. In said letter, Plaintiff has added to her request three additional fact witnesses for a total of nine, despite the fact that by that point in time, she had already taken nine depositions and had not obtained any agreement or court order to exceed the maximum of ten allotted by rule.

8. Plaintiff’s composite Exhibit E fails to include correspondence from counsel for Health Central of September 9, 2005 advising counsel that Plaintiff had already deposed its ER medical director, Dr. O’Brien, and further advising that, although Health Central would consider stipulating to allow Plaintiff to exceed ten depositions, her request would have to be pared down in light of the fact that when all counsel met to agree to a discovery plan, Plaintiff indicated she intended to take depositions of two or three nurse employees of this Defendant and its ER physician, Dr. O’Brien, and these recent requests seemed unwarranted.

9. The fifth letter in Plaintiff’s composite exhibit likewise predates the Court’s Order at issue. It is dated September 21, 2005, in excess of three months prior.

10. Plaintiff’s sixth letter in composite Exhibit E likewise predates the Court’s Order by approximately three months as it is dated September 26, 2005.

11. Plaintiff’s motion, in paragraph 1, states that Plaintiff began requesting the identities and deposition dates for various hospital personnel including “d. triage nurse,” as referenced in Plaintiff’s Exhibit A. Reference to Exhibit A reflects that a request for the identity and/or deposition

date of the triage nurse was not included with that request. Indeed, Plaintiff's motion to exceed ten depositions made no reference of her intent to depose a triage nurse, and it was not until after the court granted Plaintiff's motion to exceed ten depositions that Plaintiff ever attempted to schedule a triage nurse for deposition.

12. Subsequent to the Court's Order of January 25, 2006, this Defendant has complied with the Order by making available for deposition its employees most responsive to Plaintiff's requests and identifying (by name and last known address) those former employees also responsive to Plaintiff's requests. Indeed, with this Defendant's assistance, Plaintiff originally scheduled the depositions of this Defendant's ER nursing director, assistant director, and nursing supervisor, Robert Stein, Paulette Morrison and Joel Nicolo, respectively. (See Exhibit 2) These individuals filled the respective positions requested and also would be this Defendant's most knowledgeable individuals to answer the questions about "staffing" and "policies and procedures." Had Plaintiff taken these three depositions, she would have reached the maximum number authorized by the Court's Order. These depositions were noticed by Plaintiff on February 21, 2006.

13. Pursuant to correspondence of March 24, 2006, the undersigned also followed up on a number of issues being discussed between the parties. Among these included giving opposing counsel the courtesy of advance notice that this Defendant's ER nursing supervisor, assistant director and nursing supervisor, being produced at her request, were not employed by this Defendant at the time of Mr. Lattner's care at Health Central. (See Exhibit 4) Furthermore, it was explained that because all the individuals who held these positions at the time Mr. Lattner presented to Health Central were no longer employees, our "persons with most knowledge" would necessarily be these present employees. It was even suggested that Plaintiff might consider taking only one of these depositions and then deciding who next needed to be deposed, if anyone.

14. Subsequently, on March 28, 2006, Plaintiff cancelled all three of these depositions. (See Exhibit 5) Plaintiff then informally asked for the names of the former employees who held those positions at the time Mr. Lattner was a patient at Health Central.

15. Within a week and without any formal discovery request, Plaintiff was notified by this Defendant on April 4, 2006 of the names of the former ER director and assistant director. Plaintiff could have taken these two depositions and would have reached her thirteen allotted depositions by doing so. Plaintiff did not set these individuals for deposition. The undersigned also advised opposing counsel that he would provide the name(s) of former nursing supervisors/charge nurse upon clarification of this information from his client.

16. In the meantime, Plaintiff decided to also schedule the deposition of another fact witness, a former nurse employee of this Defendant, John Nemchek. Plaintiff claimed she believed Mr. Nemchek to have been the decedent's triage nurse, however, pursuant to correspondence of March 22, 2006, this office notified opposing counsel that it had met with Mr. Nemchek, he had reviewed the chart and saw no notes in his handwriting, and had no recollection of the patient either. (See Exhibit 3)

17. Nevertheless, Plaintiff proceeded to take this deposition and questioned Mr. Nemchek on numerous issues related to staffing, policies, procedures, practices and such, even after establishing that he was not this patient's triage nurse and had no memory of any contact with him whatsoever. Moreover, Mr. Nemchek was not offered as a corporate representative or person with most knowledge. This deposition put Plaintiff at eleven fact witness deposition with two remaining before reaching her court-ordered limit.

18. Defendant acknowledges that Plaintiff claims to have been originally informed informally at previous depositions by the hospital's risk manager that Mr. Nemchek was the triage

nurse. Although Ms. Cockrell may have thought the handwriting on the triage notes looked like Mr. Nemchek's, Plaintiff was given advance notification, not only that this was not confirmed but, indeed, it was contradicted by Mr. Nemchek himself. Nevertheless, Plaintiff elected to proceed with the deposition and inquired into numerous other issues during the interrogation of Mr. Nemchek. Indeed, Plaintiff has examined defendant experts regarding the testimony of Mr. Nemchek as well. (This involved questioning at the recent deposition of defense expert, Neil Little, which has not yet been transcribed.)

19. On May 3, 2006, counsel further advised Plaintiff's counsel that his client believed the triage nurse notes were the handwriting of a former employee by the name of Peter Mentz, RN. (See Exhibit 6) His last known address was likewise provided. Furthermore, other former employees on duty as charge nurses during Mr. Lattner's ER stay were also identified as including Mr. Mentz and three other individuals whose names and last known addresses were provided.

20. In sum, the foregoing shows that this Defendant has dutifully cooperated with Plaintiff and done nothing to violate the Court's order by making available for deposition its current employees responsive to Plaintiff's requests and, without the need for any formal discovery request, identifying former employees by name and last known address who were likewise responsive to Plaintiff's requests. In fact, counsel for the Defendant additionally went out of its way to avoid ambushing Plaintiff in a "gotcha" position by giving advance notice of the factual limitations Plaintiff could anticipate by taking the depositions of its employees and, even, in the case of John Nemchek, a former employee it had been able to reach so that Plaintiff could best decide which depositions she wanted to set before reaching her limit.

21. At the present time, Plaintiff has two remaining fact depositions she may take before reaching the court-ordered limit of thirteen. Moreover, in addition to the requests cited in Plaintiff's

motion and memorandum, Plaintiff has also recently advised the parties of her intent to take the telephonic deposition of Christine Beck, RN (a nurse on duty in ER department during Mr. Lattner's admission to Health Central on April 22 and 23, 2004). (See Exhibit 7) This is in addition to Plaintiff's correspondence of May 19, 2006 requesting the deposition of triage nurse, Peter Mentz, and other former employees, Paul Condon, Deborah Benzal and Barbie Thompkins-Rhoden. (See Exhibit 8)

22. Both prior to and even since the Court's order of January 5, 2006, Plaintiff has requested names and/or depositions of more witnesses than allowed by Rule or order. Plaintiff was provided the names and dates for depositions of all current employees of this Defendant she has requested. She has also been provided the names and last known addresses of former employees.

23. Plaintiff's motion seeks to compel this Defendant to comply with its court order of January 5, 2006, however, this Defendant has done nothing but comply. It is believed that Plaintiff's motion is frivolous and this Defendant therefore requests the Court consider taxation of costs and fees.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic filing through the Clerk of the Court by using the CM/EFT system which will send a notice of electronic filing to all counsel on the attached Service List, on this 30th day of May, 2006.

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