

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA,
ex rel. KARYN L. DENK-WALKER,

Plaintiff,

v. Case No.: 5-02-cv-131-Oc-10GRJ

LEESBURG FAMILY MEDICINE, P.A.,

Defendant.

**DEFENDANT'S RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Defendant, R & F Properties of Lake County, Inc., f/k/a Leesburg Family Medicine, P.A. ("LFM"), by its undersigned attorneys, responds to the first request for production of documents served by the Plaintiff, Karyn L. Denk-Walker ("Denk-Walker"), on August 25, 2003, as follows:

General Response

LFM will produce the documents requested for inspection and copying by Denk-Walker, subject to the objections and privileges set forth below, at a location and on a date and time mutually agreed upon by counsel for the parties.

General Objections

LFM objects to the definitions and instructions to the extent they impose obligations beyond those set forth in *Fed. R. Civ. P. 34*.

LFM objects to the scope of Ms. Denk-Walker's document requests. Her complaint alleges false claims solely with respect to her services to Medicare beneficiaries. Requests 9 and 17, for example, seek documents for all LFM's claims to



Medicare, whether or not they have any connection to Ms. Denk-Walker. Additionally, the time period of the request, *i.e.*, January 1, 1997 through December 31, 2002, should be narrowed to the time of her employment with LFM (February 1997 through May 1999). The document requests cover 43 months after her employment terminated.

The document requests as a whole are overbroad and burdensome. From 1997 through 2002, LFM had approximately 218,000 office visits. Unless a protective order is entered, each of these 218,000 office visits will need to be reviewed to respond to requests 9 and 17. Ms. Denk-Walker conducted just over 9,000 office visits during her employment, or only 4% of the total covered by the document request. The burden to LFM of producing the documents requested is vastly outweighed by the probative value of the documents sought. Documents requested for nonnurse practitioner services to Medicare beneficiaries, as well as documents generated after May 1999, are irrelevant to the claim or defense of any party. *Fed. R. Civ. P. 26(b)(1)*.

LFM objects to the disclosure or production of protected health information until a qualified protective order is entered or other provisions of the privacy regulations set forth in the Health Insurance Portability and Accountability Act of 1996 are satisfied. *See U.S. ex rel. Stewart v. La. Clinic*, 2002 U.S. Dist. LEXIS 24062 (E.D. La. Dec. 12, 2002).

Due to the extremely broad scope of Ms. Denk-Walker's document requests, HIPAA requirements and Florida law, § 456.057, Fla. Stat. (2003), LFM is filing contemporaneously with this response a motion for protective order.

Specific Responses

1. **Organizational documents**

Response: Objection. The organizational documents requested are not relevant to the claim or defense of any party. *Fed. R. Civ. P. 26(b)(1)*.

2. **Organizational structure and employee composition**

Response: There are no documents reflecting LFM's managerial/organizational structure. Objection to the request for "[a]ll documents that reflect . . . employee composition" on the ground that it is vague and overbroad. Without waiving its objection, in the spirit of cooperation, LFM will produce to Ms. Denk-Walker the names and last known addresses and telephone numbers (if available) of all employees who worked at LFM in May 1999 (when her employment was terminated).

3. **Ms. Denk-Walker's personnel file and work schedules**

Response: Ms. Denk-Walker's personnel file will be produced. Monthly calendars of her work schedules will be produced.

4. **List of LFM personnel**

Response: Objection. The request includes documents that contain confidential information about LFM's current and former employees. Without waiving its objection, in the spirit of cooperation, LFM will produce to Ms. Denk-Walker the names and last known addresses and telephone numbers (if available) of all employees who worked at LFM in May 1999 (when her employment was terminated).

5. **Job descriptions**

Response: LFM will produce job descriptions.

6. Personnel schedules

Response: Objection. The only relevant schedules are the monthly calendars of Ms. Denk-Walker that will be produced as referenced in paragraph 3 above. Monthly calendar entries for other LFM personnel are irrelevant to the claim or defense of any party. *Fed. R. Civ. P. 26(b)(1)*.

~~7. Employment contracts~~

Response: Objection. The only relevant employment contracts are those between LFM and Ms. Denk-Walker. These are contained in her personnel file. Employment contracts of other LFM employees are irrelevant to the claim or defense of any party. *Fed. R. Civ. P. 26(b)(1)*.

8. Medicare guidelines and regulations

Response: Objection. This request asks LFM to research Ms. Denk-Walker's case. The request is not limited to documents prepared by or for LFM and is improper. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997).

9. Medicare reimbursement documents

Response: Objection. See general objections above.

10. Description of LFM Medicare billing practices

Response: Objection. See general objections above.

11. Medicare seminars

Response: Objection. See general objections above.

12. Medicare compliance efforts

Response: Objection. See general objections above.

13. Medicare billing meetings

Response: Objection. See general objections above.

14. Medicare billing consultants

Response: Objection. See general objections above.

15. Noncompliance correspondence with Medicare

Response: Objection. See general objections above.

16. Medicare billing memoranda

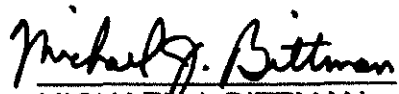
Response: Objection. See general objections above.

17. Medicare patient data

Response: Objection. See general objections above.

DATED: September 29, 2003.

Respectfully submitted,



MICHAEL J. BITTMAN
Florida Bar No. 0347132
JOHN M. BRENNAN
Florida Bar No. 0297951
TROY A. KISHBAUGH
Florida Bar No. 014959
Gray, Harris & Robinson, P.A.
301 E. Pine Street, Suite 1400
Post Office Box 3068
Orlando, FL 32802-3068
(407) 843-8880 Telephone
(407) 244-5690 Facsimile
Trial Counsel for Defendant

and

FRANK E. PIERCE, III, ESQ.
Florida Bar No. 0270921
Gurney & Handley, P.A.
Two Landmark Center
225 East Robinson Street
Suite 450
P.O. Box 1273
Orlando, FL 32802-1273
(407) 843-9500 Telephone
(407) 649-4941 Facsimile
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I *HEREBY CERTIFY* that a true and correct copy of the foregoing was furnished
this 29th day of September 2003 as follows:

VIA HAND DELIVERY TO:

BERNARD H. DEMPSEY, JR., ESQ.
Dempsey & Sasso
390 N. Orange Avenue
Suite 2700
Orlando, FL 32801-1673

VIA UNITED STATES MAIL TO:

PAUL I. PEREZ, ESQ.
RONNIE S. CARTER, ESQ.
Office of the U.S. Attorney
United States Courthouse
300 North Hogan Street
Suite 700
Jacksonville, FL 32202-4270



MICHAEL J. BITTMAN