

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MEGEN DUFFY,)
)
Relator/Plaintiff,)
)
v.)
)
LAWRENCE MEMORIAL HOSPITAL,)
)
Defendant.)

Case No. 2:14-cv-2256-SAC-TJJ

MEMORANDUM AND ORDER

This matter is before the Court on Relator’s¹ Motion to Compel Production of Triage Notes in Response to Requests for Production 40 and 43 (ECF No. 210). Pursuant to Federal Rule of Civil Procedure 37 and D. Kan. Rules 37.1 and 37.2, Plaintiff asks the Court to order Defendant Lawrence Memorial Hospital to produce triage notes in response to RFPs 40 and 43. Defendant opposes the motion. As set forth below, the Court finds Plaintiff’s motion moot.

I. Relevant Background

The relevant background concerning this dispute is set forth in the Court’s Memoranda and Orders dated March 31, 2017 (ECF No. 157) and August 11, 2017 (ECF No. 223).

II. Summary of the Parties’ Arguments

Plaintiff argues that Defendant withheld triage notes that are responsive to her Requests for Production 40 and 43, and that she fully discussed the issue in her briefing in support of her Motion to Compel Regarding Defendant’s Sample Produced in Response to Requests for Production 40, 41, 43, and 58 (ECF No. 193).² Plaintiff asserts she first learned of the existence

¹ Because the United States declined to intervene in this qui tam action, the Court will refer to Relator as Plaintiff.

² The briefs in which Plaintiff discussed the triage notes are ECF Nos. 205 and 208.

of the triage notes on June 23, 2017, when Defendant filed its opposition to Plaintiff's Motion to Compel. Out of an abundance of caution, Plaintiff has filed the instant motion in the event the Court finds the triage notes constitute a sufficiently separate issue so as to require another motion.

Defendant urges the Court to deny the motion on the ground that Plaintiff failed to meet and confer prior to filing it, and on the merits because the triage notes are facially non-responsive to Requests 40 and 43.

III. Analysis

Plaintiff's May 26 motion to compel (ECF No. 193) asked the Court for an order compelling responses to her RFPs 40, 41, 43 and 58. Both parties discussed the triage notes in connection with that motion,³ as well as in connection with Defendant's motion to file a sur-reply in opposition to Plaintiff's motion to compel.⁴ In its Memorandum and Order dated August 11, 2017 denying Plaintiff's May 26 motion, the Court fully considered all issues—including the triage notes—surrounding Defendant's responses to RFPs 40, 41, 43 and 58. The Memorandum and Order includes the following ruling therein: "The Court denies Plaintiff's motion insofar as it seeks to compel Defendant to provide additional documents responsive to RFPs 40, 41, 43 and 58."⁵

³ See Defendant/Counterclaimant Lawrence Memorial Hospital's Brief in Opposition to Plaintiff's Motion to Compel Regarding Defendant's Sample Produced in Response to Requests for Production 40, 41, 43 and 58 (ECF No. 202) at 9-12; Reply in Support of Plaintiff's Motion to Compel Regarding Defendant's Sample Produced in Response to Requests for Production 40, 41, 43, and 58 (ECF No. 205).

⁴ See Relator's Memorandum in Response to Defendant's Motion for Leave to File Sur-Reply to Relator's Motion to Compel Regarding Defendant's Sample Produced in Response to Requests for Production 40, 41, 43, and 58 (ECF No. 208).

⁵ ECF No. 223 at 4.

Plaintiff filed the instant motion on July 24, 2017, or eighteen days before the Court ruled on her motion to compel related to Requests for Production 40, 41, 43 and 58. While the Court understands why Plaintiff filed the motion, the Court's earlier ruling encompasses Plaintiff's request for an order compelling Defendant to produce triage notes in response to RFPs 40 and 43, thereby rendering Plaintiff's motion moot.

IT IS HEREBY ORDERED that Relator's Motion to Compel Production of Triage Notes in Response to Requests for Production 40 and 43 (ECF No. 210) is moot.

Dated this 23rd day of August, 2017 at Kansas City, Kansas.

s/ Teresa J. James
Teresa J. James
U.S. Magistrate Judge