

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROSANNE SCROGGINS, and)
 CHESTER WILLIAMS,)
)
 Plaintiffs,)
)
 v.)
)
 C. R. ENGLAND, INC., a Utah)
 corporation, and ROBERT J. DALY JR.,)
)
 Defendants.)

7:10CV5004

MEMORANDUM AND ORDER

On or about April 18, 2011, the defendants served a subpoena upon Dawn Levine, Ph.D. and Kaiser Permanente, requiring all neuropsychological records, testing data, raw scores, and test results to be sent directly to Robert Arias, Ph.D., 6940 Van Dorn, Suite 201, Lincoln, Nebraska 68506, a neuropsychologist retained by defendants, for his review and analysis. Defense counsel drafted the subpoena to require the information to be sent directly to Robert Arias, Ph.D., 6940 Van Dorn, Suite 201, Lincoln, Nebraska 608506.

Dr. Levine refused to comply with the subpoena, stating the subpoenaed records would not be produced without either a signed authorization from the plaintiff or a court order which required the requested records to be produced.

On June 6, 2011, the defendant filed a motion for an order compelling Dr. Levine and Kaiser Permanente to comply with the subpoenas. The plaintiff’s mental state is an issue in this case, the subpoenaed documents are relevant, and plaintiff’s counsel did not oppose the motion to compel.

On June 8, 2011, the court entered the following order:

On or before June 24, 2011, Dawn Levine, Ph.D. and Kaiser Permanente shall assemble and produce directly to Robert Arias, Ph.D., 6940 Van Dorn, Suite 201, Lincoln, NE 68506, any and all neuropsychological records, testing data, raw scores, test results and all other documents relating to the neuropsychological evaluation Dr. Levine conducted on Rosanne Scroggins on or about December 9, 2008.

Filing No. [88](#).

Dr. Levine and Kaiser Permanente did not comply with this order, and did not advise this court that it intended to ignore the prior subpoenas and this court's order. Upon further inquiry by counsel for the defendant, Kaiser Permanente explained:

Neuropsychological records are afforded special confidentiality protection. Therefore, we are unable to comply with your subpoena and request. Until you provide us with a HIPAA compliant authorization signed by the patient *or a court order signed by the judge* records will not be released. After we receive the proper documentation *the records will be sent directly to the judge* for viewing.

Filing No. [99](#), at CM/ECF p. 5 (Kaiser Permanente letter dated July 6, 2011)(emphasis added).¹

¹Kaiser Permanente also verbally expressed concern with this court's order because the undersigned judge's signature was an s/ signature. As in the California federal courts, (see [Local Rules of the United States District Court for the Eastern District of California](#)), an electronic s/ signature on an order filed of record in this federal court is valid judicial signature, and the fact that an s/ signature was used on a court order provides no legitimate basis for ignoring or refusing to comply with the order.

Attached to this Memorandum and Order are two subpoenas for service upon Dawn Levine, Ph.D. and Kaiser Permanente in the United States District Court for the Eastern District of California. The subpoenas are signed by Stephen S. Gealy, counsel for the defendant and an attorney authorized to practice in the United States District Court for the District of Nebraska, the United States Court of Appeals for the Eighth Circuit, and the United States Supreme Court. Mr. Gealy is therefore authorized to sign the attached subpoenas for document production pursuant to Rule 45(a)(3)(A) of the Federal Rules of Civil Procedure.

The subpoenas command Dawn Levine, Ph.D. and Kaiser Permanente to produce any and all neuropsychological records, testing data, raw scores, test results and all other documents relating to the neuropsychological evaluation Dr. Levine conducted on Rosanne Scroggins on or about December 9, 2008. In accordance with the terms set forth in Kaiser Permanente's letter, the subpoenas direct Kaiser Permanente and Dawn Levine Ph.D. to produce the documents **to the undersigned judge**.

Accordingly,

IT IS ORDERED:

- 1) Defendant's second motion to compel, (filing no. [98](#)), is granted.
- 2) On or before July 26, 2011, Dawn Levine, Ph.D. and Kaiser Permanente shall assemble and produce **to the undersigned magistrate judge**, at the name and address set forth in the attached subpoenas, any and all neuropsychological records, testing data, raw scores, test results and all other documents relating to the neuropsychological evaluation Dr. Levine conducted on Rosanne Scroggins on or about December 9, 2008.
- 3) The clerk shall prepare two certified copies of this order, attach one such copy to each of the subpoenas, and deliver the orders with attached subpoenas to the Marshal.

- 4) To preserve the integrity of this court and assure the enforcement of its orders, and to minimize any further delay in case progression, the United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve a certified copy of this order along with the attached subpoena on:

Dawn Levine, PhD.
Fair Oaks Medical Office Building
Department of Psychiatry/Neurological Services
2345 Fair Oaks Boulevard
Sacramento, CA 95825

and

Kaiser Permanente
%Rue Henninger
Legal Release of Information
3240 Arden Way
Sacramento, CA 95825

The Marshal is instructed to serve Rue Henninger with the order and subpoena for service on Kaiser Permanente.

DATED this 13th day of July, 2011.

BY THE COURT:



United States Magistrate Judge