



### **I. Defendants' motion to compel is denied**

Defendant PrimeSource seeks limited discovery of Plaintiff Henrietta Wilson's medical records.<sup>7</sup>

At trial, a jury will decide if the Plaintiffs' workday began at Plaintiffs' homes when Plaintiffs allegedly loaded PrimeSource medical equipment into their vehicles.<sup>8</sup> Plaintiff Wilson reports that she injured herself hauling PrimeSource medical equipment on November 15, 2015.<sup>9</sup> Wilson received workers compensation for this injury.<sup>10</sup>

PrimeSource moves to compel Wilson to produce medical records "pertaining to the workers compensation injuries."<sup>11</sup> PrimeSource reasons that Wilson's medical records are probative as to whether she actually hauled equipment at her home every morning.<sup>12</sup>

PrimeSource's argument loses.

Under Ohio law, a plaintiff waives her physician-patient privilege when she files a lawsuit if the communications in question "relate[] causally or historically to physical or mental injuries that are relevant to issues in the . . . civil action."<sup>13</sup>

This is not a personal injury lawsuit; it is an FLSA case about overtime pay. Wilson's wage and overtime claims do not relate causally to her injury. Wilson's physician-patient privilege remains intact.

PrimeSource makes a strong argument that Plaintiff Wilson made her medical history relevant by claiming she was injured hauling medical equipment.<sup>14</sup> However, Wilson's

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<sup>7</sup> Doc. [182](#) at 14-15; Doc. [189](#) at 3 n.1.

<sup>8</sup> Doc. [186](#) at 11.

<sup>9</sup> Doc. [102-14](#) at 1-2.

<sup>10</sup> Doc. [184-1](#) at 1.

<sup>11</sup> Doc. [189](#) at 3-4.

<sup>12</sup> Id. at 2-3.

<sup>13</sup> Ohio Rev. Code Ann. § 2317.02(B)(3)(a).

<sup>14</sup> Doc. [182](#) at 15. PrimeSource says McMullen v. Reserves Network, Inc. should control the Court's analysis because the McMullen court ordered a plaintiff to turn over her medical records in a wrongful termination lawsuit.

allegations that she was injured on the job do not “directly place[] the patient’s physical . . . condition at issue” in a trial for unpaid wages.<sup>15</sup> The nexus between Wilson’s statements about her injury and her FLSA claims is insufficient to defeat Wilson’s physician-patient privilege.<sup>16</sup>

Moreover, Defendants already have extensive medical records from Wilson’s injury because of Wilson’s workers’ compensation claim.<sup>17</sup> These records include numerous physician notes and assessments. For instance, on February 17, 2017, physician Mauro Tuasun wrote “H. Wilson was involved in a [work related injury] on 11/15/15 and suffered severe strain of neck [and] upper back.”<sup>18</sup> Other records detail Wilson’s physical complaints, the physician’s findings, and Wilson’s treatment regimen.<sup>19</sup> Defendants possess sufficient information to cross-examine Wilson about her injury.

The Court denies PrimeSource’s motion to compel production of Wilson’s medical records.

## **II. The Court declines to bifurcate the trial**

Defendants ask the Court to bifurcate the trial.<sup>20</sup> Plaintiffs joined Defendant Advantage Capital to this lawsuit on February 22, 2017, several months after discovery began.<sup>21</sup> Advantage Capital says bifurcation will give it sufficient time to prepare for trial.<sup>22</sup>

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2013 WL 395501, at \*1 (N.D. Ohio Jan. 31, 2013). However, the McMullen plaintiff also brought an emotional distress claim that “put her physical and mental health at issue.” *Id.* In contrast, Plaintiffs here bring only wage and overtime claims.

<sup>15</sup> *Porter v. Litig. Mgmt., Inc.*, 2000 WL 573197, at \*2 (Ohio Ct. App. May 11, 2000).

<sup>16</sup> *Campolieti v. Cleveland*, 921 N.E.2d 286, 296 (Ohio Ct. App. 2009).

<sup>17</sup> Doc. [184-1](#).

<sup>18</sup> *Id.* at 10.

<sup>19</sup> See, e.g., *id.* at 18. Dr. Tuasun made this report on March 9, 2016. *Id.*

<sup>20</sup> Doc. [158](#).

<sup>21</sup> Doc. [90](#).

<sup>22</sup> Doc. [158](#) at 2.

Defendants' motion to bifurcate is denied. The Court continued the trial from May 22, 2017 to August 7, 2017 to let Defendant Advantage Capital get up to speed. This continuance provided Advantage Capital with sufficient time to prepare.

### **III. The declines to enter a show cause order**

Defendants subpoenaed Dr. Eric Beatty for all documents relating to the Plaintiffs and Plaintiffs' counsel.<sup>23</sup> Dr. Beatty's connection to this litigation is unclear. Dr. Beatty never replied to the discovery request.

In response, Defendants ask the Court to enter a show cause order against Dr. Beatty.<sup>24</sup> Defendants want Dr. Beatty to explain to the Court why he never produced the requested documents.

The Court declines to issue a show cause order.

For the same reasons explained in the Section II, the Court is hesitant to authorize a medical records request in this FLSA case. Furthermore, Defendants' discovery request is exceptionally broad and Defendants' show cause request contains no information about Dr. Eric Beatty's relevance.<sup>25</sup>

Accordingly, the Court denies PrimeSource's request for a show cause order.

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<sup>23</sup> [181-1](#) at 7.

<sup>24</sup> Doc. [181](#).

<sup>25</sup> Doc 181; Doc 181-1.

**IV. Conclusion**

For the foregoing reasons, the Court **DENIES** Defendants' motions to compel Wilson's medical records, to bifurcate the trial, and to enter a show cause order.

IT IS SO ORDERED.

Dated: July 17, 2017

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE