

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LUCAS GEORGANDELLIS, MD,

Plaintiff,

vs.

Civil Action 2:08-CV-626
Judge Marbley
Magistrate Judge King

HOLZER CLINIC, INC., et al.,

Defendants.

OPINION AND ORDER

This is an employment action in which plaintiff alleges that defendants, a medical clinic and hospital, as well as their officers or shareholders, retaliated against him and terminated his employment in violation of the federal Whistleblower Act, 31 U.S.C. §3730(h). Plaintiff also asserts that the defendants' covenant not to compete violates federal and state antitrust laws.¹ During the course of discovery, plaintiff requested production of the minutes of the defendant clinic's board of directors and risk management committee. In response, the defendant clinic produced a redacted version of the board of directors minutes, indicating that only information unrelated to the claims and defenses asserted in this action and information protected by the attorney client privilege had been withheld. The defendant clinic also refused to produce any risk management committee documents on the basis that all such documents were protected by the

¹The Court's mediator, *see* Doc. No. 106, recently reported that the claims against the Holzer Medical Center defendants have been resolved and will be dismissed.

attorney client privilege in light of the presence of counsel at the meetings of that committee. Thereafter, and at the apparent request of plaintiff, the defendant clinic submitted the unredacted and withheld documents to the Court for its *in camera* review.

The Federal Rules of Civil Procedure make clear that a party is entitled to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense" F. R. Civ. P. 26(b)(1). However, privileged material, even if relevant, falls outside the scope of permissible discovery. *In re Lott*, 424 F.3d 446, 452 (6th Cir. 2002) (citing Fed. R. Civ. P. 26(b)(1)).

"The attorney-client privilege protects from disclosure 'confidential communications between a lawyer and his client in matters that relate to the legal interests of society and the client.'" *Ross v. City of Memphis*, 423 F.3d 596, 600 (6th Cir. 2005) (quoting *In re Grand Jury Subpoena (United States v. Doe)*, 886 F.2d 135, 137 (6th Cir. 1989)). The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. *Upjohn v. United States*, 449 U.S. 383, 389 (1981) (citing 8 J. Wigmore, *Evidence* § 2290 (McNaughton rev. 1961)).

This Court has reviewed the documents submitted by the defendant clinic for *in camera* inspection. Comparison of the unredacted and redacted versions of the minutes of the board of directors confirms that this defendant has produced to plaintiff all

information within those documents that is both relevant to the claims and defenses in this action and is not protected by the attorney client privilege. Moreover, the minutes of the risk management committee also confirm that counsel participated in each such meeting, for the purpose of providing legal advice. Moreover, much of the discussions during those meetings has no relevance to the claims or defenses presented in this action.

In short, the Court concludes that the defendant clinic properly redacted or withheld the documents sought by plaintiff in this regard.

The defendant clinic shall promptly arrange to retrieve its *in camera* submission from the chambers of the undersigned.

Plaintiff's motion for leave to file a memorandum in support of his request for documents, Doc. No. 56, is **DENIED**.

May 4, 2010

S/ Norah McCann King
Norah McCann King
United States Magistrate Judge