

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

Sheryl L. Szeinbach, :
 :
Plaintiff : Civil Action 2:08-cv-00822
 :
v. :
 :
The Ohio State University, : Magistrate Judge Abel
 :
Defendant :

Order

Plaintiff Szeinbach's March 12, 2014 motion for a status conference to address discovery issues (doc. 241) is DENIED, but based on the submissions by counsel the following discovery rulings are made.

Defendant's deposition of plaintiff Szeinbach on damages. I agree with defendant that Dr. Szeinbach's deposition is incomplete because her tax returns were not available. But so long as defendant's counsel had plaintiff's discovery responses in their possession at the time they deposed Dr. Szeinbach, the lack of verification did not prevent them from questioning her. She was under oath and could have been asked to verify her discovery answers and been cross-examined about them.

Defendant's demand for an expert report from Dr. Kendra McCaney, M.D. Generally, treating physicians and psychologists are not specially retained within the meaning of Rule 26(a)(2)(B). *Fielden v. CSX Transportation, Inc.*, 482 F.3d 866, 869-71 (6th Cir. 2007). Unlike specially retained experts, treators make available office notes and

other treatment records created for the purpose of providing medical care over a period of time to their patient. Their business is providing medical care to patients, not providing expert opinions for litigation. They should not be burdened with preparing a Rule 26(a)(2) report. Plaintiff as a party is required to respond to interrogatories about what medical opinions plaintiff intends to elicit from treators. Defendant has failed to demonstrate that Dr. McCaney should be considered a specially retained expert who is required to prepare Rule 26(a)(2) disclosures.

Depositions to authenticate documents. Plaintiff has failed to demonstrate why the documents Dr. Roig used to make his Rule 26(a)(2) disclosures were not authenticated before discovery was closed. The hearsay issues existed when he made the report. The fact that his report was stricken is not a ground to reopen that discovery.

s/Mark R. Abel _____
United States Magistrate