

United States District Court
Southern District of Texas

ENTERED

January 11, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GERALD MORA,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 2:14-CV-343
	§	
JOSE CHAPA, <i>et al</i> ,	§	
	§	
Defendants.	§	

AMENDED ORDER DENYING MOTION TO STRIKE

Pending before the Court is Defendants' Motion to Strike Designation of Expert Witness. (D.E. 92). Plaintiff's Designation of Expert (D.E. 88) appears to be a reproduction of a letter from Ester Pollar, M.D., one of Plaintiff's treating physicians. The letter summarizes her treatment of Plaintiff and states her opinion about the importance of proper care of Plaintiff's tracheostomy site and that failure to provide proper care "can be fatal at worst, and distressing for the patient at best." (D.E. 88, p. 5). The Defendants object and move to strike this expert designation because it fails to comply with the requirements of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

Rule 26(a)(2)(B) requires a written report "if the witness is one retained or specifically employed to provide expert testimony . . ." *Id.* Dr. Pollard was not retained by Plaintiff as an expert, rather she is a treating physician. As a treating physician, a written report is not required pursuant to Rule 26(a)(2)(C). Further, Plaintiff is a *pro se*

litigant who is incarcerated. The undersigned finds, for purposes of this case, Plaintiff's disclosure and designation of Ester Pollar, M.D. as a witness who will testify under Rule 702, 703 and 705 of the Federal Rules of Evidence is sufficient to satisfy the notice and disclosure requirements of Rule 26.

Therefore, Defendants' Motion to Strike Designation of Expert Witness (D.E. 92) is **DENIED**.¹

ORDERED this 11th day of January, 2017.



Jason B. Libby
United States Magistrate Judge

¹ The undersigned has recommended Defendants' motion for summary judgment be granted. (D.E. 98). However, the order denying Defendants' motion to strike is made in the event the memorandum and recommendation is not adopted and the case proceeds to trial.