

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANGELA LOWE,)	CASE NO: 1:08-cv-01339
)	
Plaintiff,)	JUDGE: DONALD C. NUGENT
)	
vs.)	
)	
CUYAHOGA COUNTY/BOARD OF)	<u>BRIEF IN OPPOSITION TO</u>
COMMISSIONERS, <i>et al.</i> ,)	<u>PLAINTIFF'S MOTION TO COMPEL</u>
)	<u>ON BEHALF OF DEFENDANTS</u>
)	<u>MIDWEST MEDICAL STAFFING, INC.,</u>
Defendants.)	<u>DR. EMMANUEL O' TUFFUOR, DR.</u>
)	<u>DONALD KELLON & DR. LEOPOLDO</u>
)	<u>ALVARDO</u>

Plaintiff has filed a Motion for an Order compelling Defendants to produce the following records:

1. Mortality reviews done on inmates, including Sean Levert, who have died while incarcerated; and,
2. Minutes and documentation related to quarterly meetings conducted by the Continuous Quality Improvement Committee.

The state of Ohio, has recognized the critical importance of mortality reviews and quality improvement meetings for the role they play in improving health care for all of us. The state of Ohio enacted Revised Code Sections 2305.251, 2305.252 and 2305.253 for the purpose of maintaining and protecting the confidentiality of discussions that take place and the minutes or records that are prepared by mortality review committees and quality improvement committees. This confidentiality is needed so that the participants in these committees can speak with candor, without concern for recriminations. Defendants are not aware of any binding U.S. Supreme

Court precedent or binding Sixth Circuit Court of Appeals precedent mandating the discoverability of the minutes, documents and records from the Mortality Review Committee meetings and the Continuous Quality Improvement Committee meetings. This Court can conduct its own balancing test weighing the discoverability of these materials against the application of statutory confidentiality. In doing so, this Court should recognize the compelling reasons for protecting the documents in question with a statutory privilege, and should deny Plaintiff's Motion to Compel.

When Defense counsel received a copy of Plaintiff's Motion to Compel, the first thing he did was to contact Midwest Medical Staffing, Inc., Dr. Emmanuel Tuffuor, Dr. Donald Kellon and Dr. Leopoldo Alvarado. Inquiry was made as to whether or not any of these Defendants maintained a file containing the documents which Plaintiff seeks to discover. None of these Defendants maintain such a file. Dr. Tuffuor is the only one of these Defendants who sits on the Committees reviewing deaths of inmates and reviewing continuous quality improvement issues. He does not maintain a file containing the documents which Plaintiff wishes to discover because those documents are available for his review at the County Jail, should he have a need to review them. It is not surprising that these Defendants do not maintain files containing the documents in question because the documents in question belong to the Cuyahoga County jail and not these Defendants.

In her Motion to Compel Discovery, Plaintiff has raised a number of legal issues that are not directly relevant to Plaintiff's Motion to Compel Discovery. Defendants take exception with a number of these issues as they are presented by the Plaintiff, but is not addressing those issues in this Brief. They will, however, be addressed in Defendants' Motion for Summary Judgment.

CONCLUSION

Based upon the foregoing arguments, it is requested that this Court apply Revised Code Sections 2305.251, 2305.252, and 2305.253 to the protection of the documents which Plaintiff seeks to discover. Accordingly, Defendants request that the Court deny Plaintiff's Motion. In the event, the Court grants Plaintiff's Motion, Plaintiff will necessarily have to obtain the documents from the Cuyahoga County jail.

Respectfully submitted,

/s/ Keith Hansbrough

Patrick J. Murphy (0029503)

Keith Hansbrough (0072671)

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2010, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Keith Hansbrough
Patrick J. Murphy (0029503)
Keith Hansbrough (0072671)