

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

DOCKETED  
COMPLEX LIT CENTER

OCT 14 2010

J. STEWART

ROBERT DUBOSE, Administrator :  
for the Estate of ELISE DUBOSE, :  
Deceased, :

Plaintiff, :

v. :

WILLOWCREST NURSING HOME; :  
ALBERT EINSTEIN HEALTHCARE :  
NETWORK, :

Defendants. :

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

AUGUST TERM, 2009  
No. 1603

Dubose Vs Willowcrest Nursing Home Etal-ORDER



09080160300095

ORDER

AND NOW, this 13<sup>th</sup> day of October, 2010, upon further

consideration of plaintiff's motion to determine the sufficiency of the answers to plaintiff's interrogatories and request for production of documents by defendants Willowcrest Nursing Home ("Willowcrest") and Albert Einstein Healthcare Network ("Albert Einstein"), defendants' response thereto the recommendation of the Discovery Master after in camera inspection and oral argument before the Court on issues of privilege, it is hereby ORDERED that the motion is GRANTED IN PART AND DENIED IN PART AS FOLLOWS:

1. Defendants shall produce documents identified in defense counsel's August 16, 2010 memorandum within ten (10) days of the date of this Order as follows:

a. Sections IA.1 through 4 for the time period January 1, 2005 through December 31, 2007, with names of other patients and other identifying information redacted in accordance with HIPAA. For each patient whose information is redacted, defendants shall identify the patient by a number, such as Patient 1, Patient 2, and Patient 3. Whenever that patient's information is redacted in any document production in this litigation, the patient number shall be included. The document identified in section IA.5 shall not be produced.

b. Certain documents that consist of concerns or complaints by other patients or other patients' family members identified in section II A and B shall be produced for the time period January 1, 2005 through December 31, 2007. The documents that shall be produced include but are not limited to documents related to understaffing and pain management. The defendants' interpretation of documents relevant to understaffing is too narrow, and documents that reflect complaints about delays in responding to patient's needs, requests for assistance or physical conditions are relevant to claims of understaffing. Accordingly, defendants shall produce the following documents identified in this section, with patients' names redacted, but with patient numbers inserted to identify each patient, as well as similar documents included in section IIB:

0579-0588 (all but last page)

0604-0605

0605-0609

0651-0656 (produce last page)

0671-0672

0672-0674

0675-0678

0684-0688

0696-0699

0741-0743 (produce only last page dated 6/28/06)

0755-0756 (produce 4/21/06 memo and 4/21/06 letter to A.S.)

0758-0774 (4/2106 memo and letter)

0774-0776 (produce report by A.S.)

0776-0777

0819-0824

0833-0842

0842-0843

0843-0853

0853-0856 (produce all but last page)

0860-0861

0867-0872 (produce pages 3 and 4)

0894-0900 (produce pages 2 and 3)

Within ten (10) days of the date of this Order, defendants shall review the remaining documents in section IIB and shall produce all other relevant documents consistent with the guidelines in this Order.

c. The documents identified in IIC 0571-0579 shall not be produced.

d. The documents identified in IID shall be produced for the period January 1, 2005 through December 31, 2007.

e. The medical records of certain other patients identified in section III shall be produced, with identifying information redacted and the assigned "patient number" inserted instead, for issues related to wound care and pressure ulcers, understaffing, infections, dietary care and hydration care as follows:

0609-0610

0805-0809

1406-1408

1412-1414

1515-1516

f. The document identified in section IV is relevant for the time period January 1, 2005 through December 31, 2007. The document consists of an attorney-client communication, and is protected from disclosure. However, the records from which the information contained in the document were derived, are not protected from disclosure. If they have been requested in discovery, they must be produced, with patient names and other identifying information redacted and patient numbers assigned. If this data is contained in a computer database of the

defendants, and was not generated only for the purpose of an attorney client-communication, it shall be produced.

g. The documents that consist of notes and documents contained in the file of Marie Keeley, Esquire, are relevant in part, despite the fact that they were created after the death of Ms. Dubose. These documents are or may be protected from disclosure by the attorney-client privilege or work product doctrine and shall not be produced at this time, except the following documents shall be produced:

- D. 0434-0435
- BB. 0530-0531 produce entire document
- II. 0549-0550 produce if disclosed to any third party
- PP. 0568-0569 produce entire document
- RR. 1408-1411 redact, label with patient number and produce
- SS. 1411-1412
- WW. 1418-1419
- XX. 1419-1420
- YY. 1420-1421
- CCC. 1435-1436
- FFF. 1450-1451
- BBBB. 1500-1501
- DDDD. 1505-1510 produce except for email dated 5/8/2008
- HHHH. 1525-1529 produce all except for confidential fax
- ZZZZ. 1561-1562

HHHHH. 1577-1578

1605-1608 except "various" red well

- h. Documents listed in Part VI. A shall not be produced.
- i. Documents listed in Part VI. B 1-3 shall not be produced.
- j. Defendants shall produce documents listed in Part VI. B, pages 1 (12/6/07) and 4 (6/18/07) only.
- k. The documents identified in section VII A-F and H and I shall be produced. The document identified in subsection G as Attorney/Client Privileged shall not be produced. The following Sections of the document listed in subsection J shall be produced: Wound Care Team, Recommendations, Assessment Form, Miscellaneous, PA, Nutrition, and AMDA. The following sections shall not be produced: Wound Rounds, Weekly Reports, Audits, In-Services, and Consult Audits, because they relate to specific events in 2008.
- l. The document identified as 1451-1452, as to which "privilege by analogy to a mediation memorandum" was claimed, shall be produced. A document prepared by the U.S. Attorney's Office and shared with defendants during informal settlement negotiations is not privileged. There was no formal mediation, and there is no applicable privilege.
- m. The documents identified as Kathleen Hill O'Neill documents shall not be produced, except for numbers 1472-1473, which is her retainer agreement. Kathleen Hill O'Neill was non-testifying expert hired

by the defendants and their counsel to assist their counsel in preparing a defense to a claim by the U.S. Attorney's Office. The documents identified are either not relevant, because they relate to her fees, or constitute work product.

n. Documents as to which work product and attorney client privilege were claimed shall not be produced, except as otherwise set forth in this Order and for the following:

0164-0166

0171-0173

0203-0205

0287-0290

0310-0312

0374-0376

0380-0382

0399-0426, for the period 1/1/05 through 12/31/07

The following specific documents shall not be produced:

0427-0434

0437-0439

0440-0447

0449-0453

0454-0476

0485-0489

0494-0496

0501-0508  
0510-0512  
0519-0521  
0524-0530  
0531-0536  
0539-0542  
0547-0549  
0553-0557  
0562-0568 (produce only list of current Willowcrest employees)  
0569-0571  
1414-1416  
1417-1418  
1422-1423  
1470-1471 (produce only the final signed copy of this letter)  
1478-1480  
1481-1482 (produce only the final signed copy of this letter)  
1484-1485 (produce only the final signed copy of this letter)  
1494-1498 (produce only the final signed copy of this letter)  
1501-1505  
1517-1525  
1529-1534  
1537-1539  
1549-1551 (produce only lists of employees)



1544-1559

1562-1565

1570-1573

1578-1582

1590-1605

2. Notwithstanding other paragraphs of this order, documents submitted to the U.S. Attorney's Office or to the OIG, as to which defendants claimed work product or attorney-client privilege, shall be produced.

3. All counsel are reminded to comply with CMO # 2 and to Bates stamp documents that are included in a privilege log or submitted for in camera inspection. Documents should be identified by the Bates numbers associated with the documents, and not by page of a lengthy privilege log.

BY THE COURT:

  
Sandra Mazer Moss, J.