

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CECELIA WALLACE,)	
)	
Plaintiff,)	
vs.)	NO. 1:06-cv-01560-RLY-TAB
)	
JERRY HOUNSHEL,)	
MARC LAHRMAN,)	
FAISAL AHMED,)	
ADVANCED CORRECTIONAL)	
HEALTHCARE, INC.,)	
MISSY ROBINSON,)	
DAVID RIDLEN,)	
JOSH TEIPEN,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CECELIA WALLACE, individually and as the)
executor of the estate of William M. Wallace)
(deceased),)

Plaintiff,)

vs.)

1:06-cv-01560- RLY-TAB

JERRY HOUNSHEL, in his individual)
capacity, et al.,)

Defendants.)

ORDER GRANTING MOTION TO QUASH

I. Introduction.

On September 2, 2007, Plaintiff issued requests for production of documents to eleven past employers of Defendant Dr. Faisal Ahmed. On September 20, 2007, Defendants Advanced Correctional Healthcare, Inc. (“ACH”) and Dr. Faisal Ahmed filed a motion to quash these requests. [Docket No. 39.] The Court GRANTS Defendants’ motion [Docket No. 39] for the reasons set forth below.

II. Background.

In this wrongful death case, Plaintiff Cecilia Wallace¹ is suing several county employees, medical personnel, and ACH for the death of her son, William Wallace, who died from a heart attack while in the Jackson County Jail. Plaintiff alleges that the county hired ACH as the

¹ For clarity, Plaintiff Cecilia Wallace is referred to as “Plaintiff” and decedent William Wallace is referred to as “Wallace.”

healthcare provider of the jail in order to save over \$100,000 and that doing so was at the expense of the inmates, who Plaintiff alleges were denied basic and necessary medical services. [Docket No. 41, Ex. Amended Comp. at 7.]

Furthermore, Plaintiff alleges that Dr. Ahmed, who was contracted to provide medical services as a physician to the Jackson County Jail, “visits the jail once a week and can only be reached by cell phone” and that “he does not have an office and lives in Missouri.” [*Id.* at 4.] Plaintiff states that on March 25, 2006, and April 2, 2006, Wallace told a jail officials he was experiencing chest pains but that at no time between those reports and his death did a physician examine Wallace. [*Id.* at 7-8.] Plaintiff alleges that on the day of Wallace’s death, according to inmates, jail officers did not adequately respond to Wallace until fifteen or more minutes had passed since they were summoned. [*Id.* at 8.] Plaintiff alleges that the “concern for costs is overriding [Defendants’] policies, practices and protocols developed for the jail, which were directly responsible for Wallace being denied transport to a local hospital or medical facility for a thorough examination,” and concludes that his death “was caused by deliberate and willful indifference of the named defendants who failed to respond in a proper manner.” [*Id.* at 4, 9.]

Plaintiff served requests for production of employment records on past employers of Defendant Dr. Ahmed, specifically requesting his “entire employment record . . . , including any and all evidence of performance review, disciplinary actions, and/or complaints to medical licensing boards,” and “any and all complaints, investigations, and/or final dispositions pertaining to Dr. Faisal Ahmed.” [Docket No. 39, Ex. 2 at 3.] Defendants seek to quash these requests. [Docket No. 39.]

III. Discussion.

Defendants contend that Plaintiff's requests for document production exceed the scope of the Federal Rules of Civil Procedure, arguing: (1) Plaintiff's requests for production are not relevant to the claims against Defendants; (2) the information requested by Plaintiff is private as to Dr. Ahmed, other employees, and the employers; and (3) the Court does not have jurisdiction over the non-parties so these requests are not proper subpoenas. [Docket No. 39 at 2.] Plaintiff contends that Defendants have failed to meet their burden in bringing this motion to quash. [Docket No. 43.]

First, addressing Defendants' jurisdictional assertion, Plaintiff argues that "[w]hatever merit the argument contains, the objection is not one for Defendants to make, but for the non-parties to assert if they choose to do so." [Docket No. 43 at 3.] To the contrary, because Defendants—particularly Defendant Dr. Ahmed—have a legitimate interest in these requests for production, they have standing to object. *See United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982) ("A party has standing to move to quash a subpoena addressed to another if the subpoena infringes upon the movant's legitimate interests."). Thus, the Court will address this. Even though the non-parties did not themselves raise the issue, the argument was raised by a movant having legitimate interests in quashing these requests.²

The Federal Rules of Civil Procedure allow subpoenas to be served at any place:

- (A) within the district of the issuing court;
- (B) outside that district but within 100 miles of the place specified for the

² Plaintiff suggests that "[i]f Defendants are serious in maintaining this [jurisdictional] objection, Plaintiff notes that she can simply re-direct her request directly to Defendant Dr. Ahmed, who will then bear the direct expense of obtaining the requested files and records." [Docket No. 43 at 3-4.] This argument presumes that these employment records "are in the possession, custody or control" of Dr. Ahmed, *see* Federal Rule of Civil Procedure 34(a), and the Court finds no basis for this assumption.

deposition, hearing, trial, production, or inspection;

(C) within the state of the issuing court if a state statute or court rule allows service at that place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or

(D) that the court authorizes on motion and for good cause, if a federal statute so provides.

Federal Rule of Civil Procedure 45(b)(2).

None of the addresses listed on the requests for production are within the Southern District of Indiana or the state of Indiana, and Plaintiff has not provided good cause based on a federal statute why these requests should otherwise be permitted. Furthermore, based on the addresses listed for the non-parties on the requests for production and based on the address of Plaintiff's attorney (presumably the location of production), none of the requests made are within one hundred miles of the location of production. Some are so obviously outside one hundred miles that the Court is perplexed Plaintiff even sent them.³ For example, the U.S. Indian Health Services, located in Sioux City, Iowa, is approximately 563 miles away from Indianapolis "as the crow flies."⁴ Therefore, the Court concludes it has no jurisdiction to enforce these requests for production.

Even if this Court had jurisdiction to enforce these requests as subpoenas, the information requested in them is, for the most part, not relevant to the issues in this case.

Federal Rule of Civil Procedure 26 permits discovery of "any matter, not privileged, that is

³ No subpoenas are included with the briefing on Defendant's motion to quash, so it appears Plaintiff merely served requests for production on these non-parties without including a Rule 45 subpoena. [Docket No. 39, Ex. 1.] This shortcoming further supports the conclusion that production of documents is not appropriate.

⁴ See Geobytes, City Distance Tool at <http://www.geobytes.com/CityDistanceTool.htm> (last visited Dec. 5, 2007).

relevant to the claim or defense of any party.” “Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Rule 26(b)(1); *Northwestern Mem’l Hosp. v. Ashcroft*, 362 F.3d 923, 930 (7th Cir. 2004). Likewise, regarding subpoenas to nonparties, “[t]he scope of material obtainable by a Rule 45 subpoena is as broad as permitted under the discovery rules.” *Graham v. Casey’s Gen. Store, Inc.*, 206 F.R.D. 251, 253 (S.D. Ind. 2002).

Plaintiff contends that the requests are relevant, pointing out that her claim alleges the county acted unconstitutionally when it sought out and hired Dr. Ahmed and ACH. Specifically, Plaintiff alleges she needs the requested information because “[t]he county Defendants were under some obligation to investigate the background of Dr. Ahmed and Advanced Correctional Healthcare, Inc.” and “the requested information undoubtedly shows what information was available to county Defendants prior to their decision to utilize this allegedly over-extended, out-of-state corporation.” [Docket No. 43 at 3.]

The information requested by Plaintiff, including but not limited to the non-parties’ entire employment records of Dr. Ahmed, is at best only tenuously related to the county’s obligation to provide adequate healthcare to Wallace. These discovery requests are certainly overbroad. While subpoenaing eleven non-parties for Dr. Ahmed’s employment records may imaginably unearth a piece of relevant information, as a whole Dr. Ahmed’s relationship to prior employers is not directly relevant to the issues in this case. Whether Dr. Ahmed had been disciplined by a medical licensing board prior to being hired is potentially relevant to Plaintiff’s claim that the county hired Defendants with only cost considerations in mind and not quality, and such information is certainly discoverable. However, this specific information is more appropriately obtained directly from the medical licensing boards upon obtaining a written release from Dr.

Ahmed. If such disciplinary information does indeed exist, it could lead to further specific requests for production. But the Court cannot condone Plaintiff's attempt to leap frog this properly measured discovery approach by simply sending shotgun-style requests to nearly a dozen of Dr. Ahmed's prior employers throughout the country.

IV. Conclusion.

Lacking jurisdiction to enforce the requests for production of documents issued by Plaintiff to the non-parties, the Court GRANTS Defendants motion to quash these requests. [Docket No. 39.] In addition, these requests are overbroad and otherwise properly quashed based upon the other reasons set forth above.

Dated: January 2, 2008

/s/ Tim A. Baker

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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