

ROBERT A. WEIN and ELLEN HARRIS,	:	IN THE COURT OF COMMON PLEAS OF
Individually and as Co-Administrators of the	:	LYCOMING COUNTY, PENNSYLVANIA
Estate of CHRISTIAN A. WEIN, Deceased	:	
DAWN MARIE WEIN COUNTS and	:	
ERIC ALLEN WEIN,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 96-01,744
	:	
THE WILLIAMSPORT HOSPITAL AND	:	CIVIL ACTION - LAW
MEDICAL CENTER and	:	
MICHAEL J. DIXON, M.D.,	:	MOTION TO COMPEL
Defendants	:	MOTION FOR SANCTIONS

Date: January 7, 2001

OPINION AND ORDER

Before the Court is Plaintiffs’ Motion for Sanctions against Defendant Williamsport Hospital and Medical Center filed December 31, 2001 as well as Plaintiffs’ Motion to Compel Defendant Williamsport Hospital and Medical Center to Respond to Plaintiffs’ 11th Request for Production of Documents, also filed December 31, 2001. Both Motions relate to Plaintiffs’ efforts to have Williamsport Hospital and Medical Center (hereafter “Defendant Hospital”) furnish to them copies of minutes of the Pharmacy and Therapeutic Committee of the Hospital from October 1996 to the present which contain any reference to Ativan/Loracepam, or their pharmaceutical equivalents. By an Order dated December 5, 2001, this Court had directed that those minutes be supplied over a prior objection which raised the issue that such minutes are protected by the Peer Review Protection Act, 63 P.S. §425.1, et seq.

Defendant Hospital, in its discovery response, which it contends complies with this Court’s Order of December 5, 2001, identifies seven dates of meetings where the Committee minutes contain the

referenced material but continues to withhold those minutes from Plaintiffs because the minutes were prepared “in the context of the Committee’s investigation and review, including statistical analysis and analysis of institutional procedures and policies, related to the use and administration of Ativan/Loracepam, including administrative by IV. The review was conducted for the purpose of evaluating and improving patient care. The Committee recommended no changes to policies and/or procedures as a result of said investigation.”

At argument held January 4, 2002, Plaintiffs asserted that since Defendant Hospital did not request reconsideration of this Court’s Order of December 5, 2001 nor seek any other relief therefrom it was under an obligation to comply by furnishing the minutes so requested. The Court believes that Plaintiffs are correct. The Court’s Order of December 5, 2001 directing Defendant Hospital to produce the minutes was based upon our finding Defendant Hospital had not, in its initial response nor thereafter, previously supplied this Court the necessary specificity in the way of response to allow the Court to determine that the documents were in fact peer review protected. If Defendant Hospital intended to continue to rely upon peer review protection of the documents, it should have either sought a reconsideration of the Order or a further protective order. Instead, the procedure utilized by Defendant Hospital has required Plaintiffs to file the present Motion to Compel and Motion for Sanctions. This Court believes that as an appropriate sanction Defendant Hospital shall be required to pay counsel expenses incurred in relation to the preparation and filing of the Motion and attending to the argument held January 4, 2002. In addition, since the original objection, which was not amended during the period of over nine months, the issue was to meet the

standard necessary to be a valid objection based on the Peer Review Protection Act, Defendants cannot again raise the same objection through an amended response, filed after the Court's ruling. Defendant Hospital had ample time to amend its original response when it was first challenged – if it had basis to so do – and cannot wait to act to amend until after the issue has been litigated and it receives an adverse ruling.

The Court also does not believe that the response offered by Defendant Hospital provides sufficient case-specific or fact-specific information from which this Court can determine that the references in the Committee minutes are in fact related to a factual on-going peer review procedure. Rather, the response uses some rather broad language taken from the Peer Review Protection Act definition of “Peer review” and “Review organization” to assert that the Committee was undertaking an evaluation and investigation including an analysis of patient care. While those words are referenced in the Peer Review Act definition, *see* 63 P.S. 425.2, this Court does not believe that such general language is sufficient to permit Defendant Hospital to refuse to deliver the minutes. The Peer Review Act indicates that a peer review procedure includes the evaluation of the quality and efficiency of the services of professional health care providers including practice analysis at an in-patient hospital and compliance of a hospital with the standards set by an association of healthcare providers and applicable laws. The Peer Review Act further defines a review organization to include any committee, such as the Pharmacy and Therapeutic Committee in this case, which gathers and reviews information relating to the care and treatment of patients for purposes of evaluating and improving the quality of healthcare rendered reducing morbidity or mortality or enforcing guidelines related to the cost of healthcare. While the response of Defendant Hospital makes an assertion

that such was the purpose of the Committee's investigation and review, it does so in conclusionary ways without providing any specific information which would allow this Court to say that Defendant Hospital's conclusion is an accurate and valid one. *See, Wein v. Williamsport Hospital*, 20 Lycoming Reporter 418 (1998), Pa. R.C.P. 4009.12(b)(2). *See also, Corrigan v. Methodist Hospital*, 857 F.Supp. 434 (E.D. Pa. 1994).

The Court notes Defendant Hospital's contention that to require them to disclose these minutes would essentially end the practice of peer review in Defendant Hospital. The Court does not have the ability to determine whether such a result would follow an order compelling the disclosure of the minutes or not, but accepts that this is a good faith representation made by Defendant Hospital's counsel. It is also supported by an affidavit previously filed by a corporate officer of Defendant Hospital. Accordingly, while this Court believes there are many reasons to outright order Defendant Hospital to turn over the minutes, it will not do so at this time but rather will direct that the minutes in question shall be furnished to this Court for its in-camera review. Following the Court's in-camera review a conference will be held with counsel and which the Court will disclose its intentions as to a further order and, if necessary, permit counsel to argue on the matter once again. Accordingly, the following Order will be entered.

ORDER

Defendant Williamsport Hospital and Medical Center shall pay reasonable counsel fees and expenses to Plaintiffs' counsel within thirty days of the entry of this Order related to the expenses of such counsel in the preparation and filing of the Motion for Sanctions and Motion to Compel filed December 31,

2001 and attending today's argument. In this regard counsel for Plaintiffs shall prepare and forward to counsel for said Defendant an itemized billing statement related to such fees and expenses. If there is a dispute as to the amount, the Court shall be notified and an appropriate conference and argument on the amount that is appropriate to be paid will be held.

It is further ORDERED and DIRECTED that Defendant Williamsport Hospital and Medical Center shall furnish the minutes of the meetings of the Pharmacy and Therapeutic Committee from October 1996 to the present which contains any reference to Ativan/Loracepam or the pharmaceutical equivalents to this Court for the purposes of this Court conducting an in-camera review to determine whether any information contained therein is subject to peer review protection or as such should be disclosed to Plaintiffs in response to Plaintiffs' 11th Request for Production of Documents, #1. Defendant Hospital shall furnish this information to the Court by delivering the same in a sealed envelope to the Court's Chambers where it shall be reviewed initially by this Judge and the Judge's Law Clerk. Delivery of these documents to the Court shall be made not later than Thursday, January 10, 2001, at 5:00 p.m.

BY THE COURT,

William S. Kieser, Judge

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