

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. 3:19-CV-00053 -LLK

NICOLE STUMPH

PLAINTIFFS

v.

SPRING VIEW PHYSICIAN PRACTICES, LLC., *et al.*

DEFENDANTS

MEMORANDUM OPINION AND ORDER

The parties consented, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, to have the undersigned Magistrate Judge determine all dispositive and non-dispositive matters in this case, with any appeal lying before the Sixth Circuit Court of Appeals. [DN 14].

This matter is currently before the Court on Plaintiff Nicole Stumph's Motion to Compel to supplement responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, [DN 48], and on the Motion for Protective Order brought by Spring View Physician Practices, LLC, ("Spring View"), [DN 49, 50]. Plaintiff filed her Motion to Compel on July 24, 2020. [DN 48]. On August 21, 2020, Defendant responded and filed their Motion for Protective Order. [DN 49, 50]. On August 28, 2020, Plaintiff filed both a reply to Defendant's response and a response to Defendant's Motion for Protective Order. [DN 51]. The Defendant then filed a reply in support of its Motion for Protective Order on September 4, 2020. [DN 52]. Further, the Court ordered additional briefing on several discrete issues on September 29, 2020. [DN 57]. Having received the Plaintiff's and Defendant's briefing on these issues, [DN 60, 61], the motion is now fully briefed and ripe for adjudication.

For the reasons set forth herein, both the Plaintiff's Motion to Compel, [DN 48], and Defendant's Motion for Protective Order, [DN 50], are **GRANTED IN PART** and **DENIED IN PART**.

Relevant Background

This matter arose from two alleged incidents of sexual misconduct by Defendant Dr. Samuel Kriegler, an employee of Spring View, at Spring View's offices. Plaintiff Nicole Stumph alleges that she was the victim of unwanted sexual touching from Defendant Kriegler during her patient visits. [DN 1-2 at 2]. Plaintiff alleges that Defendant Kriegler "touched the private areas, buttocks, and breasts of the Plaintiff" during her patient visits on January 18, 2018 and January 24, 2018 and that "such touching was offensive and unwarranted." *Id.* Plaintiff brings claims against Defendant Spring View for negligent selection, retention, supervision, and training of Defendant Kriegler, resulting in Defendant Kriegler's actions while functioning as its agent/employee. *Id.* at 3. Plaintiff brings claims of battery (Counts I & II), outrage (Count III), negligence (Count IV), and for punitive damages (Count V) against Defendant Kriegler. *Id.* On January 18, 2019, Defendant Kriegler removed the case from the Marion Circuit Court. [DN 1].

Since then the parties have proceeded with discovery, including depositions, interrogatories, and document production. Plaintiff filed her Motion to Compel on July 24, 2020. [DN 48]. Therein, Plaintiff argues that the Court should compel Spring View to supplement its responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents. *Id.* On August 21, 2020, Defendant responded and filed a Motion for Protective Order. [DN 49, 50]. Defendants argued that the requested documents and information were privileged and confidential, based on KRE 311.377, KRE 503, FRE 407, FRE 404 and HIPPA. *Id.* Though not argued in their

briefing, Defendants also asserted that a confidentiality agreement between Spring View and Dr. Kriegler protected documents. [DN 48-4]. Further briefing on this issue consisted of Plaintiff's reply to Defendant's response and response to Defendant's Motion for Protective Order filed August 28, 2020, [DN 51]; followed by Defendants reply in support of its Motion for Protective Order on September 4, 2020, [DN 52].

Following this, the Court ordered additional briefing on several discrete issues on September 29, 2020. [DN 57]. The parties briefed the requirements of KRS 311.377 and whether Spring View met those requirements, the application of KRS 311.377 on the evidence in question, the bearing of recent amendments to KRS 311.377 to its application, and the application of HIPPA to the evidence. [*Id.*, 60, 61].

Standard

A party may obtain discovery of any non-privileged matter that is relevant to any issue in the case, or reasonably calculated to lead to matter relevant to any issue in the case. Federal Rule of Civil Procedure 26(b)(1) states:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

A party "resisting discovery bears the burden to establish that the material either does not come within the scope of relevance or is of such marginal relevance that the potential harm resulting from production outweighs the presumption in favor of broad disclosure." *Invesco Int'l (N.A.), Inc. v. Paas*, 244 F.R.D. 374, 380 (W.D. Ky. 2007). To resist Plaintiff's discovery that appears relevant, "Defendant bears a heavy burden of demonstrating that disclosure will work a

clearly defined and very serious injury." *Id.* (citing *Empire of Carolina, Inc. v. Mackle*, 108 F.R.D. 323, 326 (S.D.Fla.1985)).

Relevance is to be "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on" any party's claim or defense. *Albritton v. CVS Caremark Corp.*, No. 5:13-CV-00218-GNS-LLK, 2016 WL 3580790, at *3 (W.D. Ky. June 28, 2016) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). However, the scope of discovery is not unlimited. "On motion or on its own, the court must limit the frequency or extent of discovery . . . if it determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." *Id.* (quoting FED. R. CIV. P. 26(b)(2)(C)(iii)). The determination of "the scope of discovery is within the sound discretion of the trial court." *Cooper v. Bower*, No. 5:15-CV-249-TBR, 2018 WL 663002, at *1 (W.D. Ky. Jan. 29, 2018), *reconsideration denied*, 2018 WL 1456940 (W.D. Ky. Mar. 22, 2018) (quoting *Chrysler Corp. v. Fedders Corp.*, 643 F.2d 1229, 1240 (6th Cir. 1981)).

Discussion

Plaintiff's Motion to Compel requests that the Court compel Spring View to supplement its answer to Interrogatory No. 17 with a full explanation of all prior complaints and that it provide full, unredacted copies of: SVU 000112-000114, SVU 000115, SVU 000116-000117, SVU 000118-119, SVU 000201, SVU 000194-200, SVU 000202, SVU 000203, SVU 000204, and SVU 000205-206. Defendant's Motion for Protective Order, likewise, seeks protection of these same materials under KRS 311.377, a confidentiality agreement between Defendants, FRE 404 and 407, KRE 503, Work Product, and HIPPA.

A. KRS 311.377

The parties do not dispute that Kentucky law applies to the claims before the court, and the Court agrees that Kentucky law is appropriate. This suit is in federal court based on diversity jurisdiction. [DN 1]. Thus, the substantive law of the state in which the court sits will apply. *Novolex Holdings, LLC v. Wurzbarger*, No. 2:19-CV-145-DLB-CJS, 2020 WL 4758360, at *3 (E.D. Ky. Aug. 17, 2020) (citing *Hanna v. Plumer*, 380 U.S. 460, 465 (1965)). Specifically, this applies to privilege issues such as this one. FED. R. EVID. 501; *See In re Powerhouse Licensing, LLC*, 441 F.3d 467, 472 (6th Cir. 2006).

The Court must determine whether Spring View is protected under the statute, and whether the statute protects these specific documents. First, KRS 311.377 applies to employees performing a designated professional review function as part of a patient safety and quality improvement initiative. Here, Defendants attest that this is precisely what Heather Lamkin was engaged in when conducting her interviews and preparing her report, [DN 60], which is all the law requires. Therefore, where a Spring View employee was properly engaged in a designated professional review function as part of a patient safety and quality improvement initiative, KRS 311.377 will apply to that work product.

Second, KRS 311.377 applies to the documents in dispute. The Court notes that this is a novel issue, as the Kentucky Legislature has recently changed the language of the law. Beginning with *Sweasy*, itself the third occasion on which the Kentucky Supreme Court revisited this issue, the Court found that the statute either excluded malpractice claims or violates Section fifty-one of the Kentucky Constitution. *Sweasy v. King's Daughters Mem'l Hosp.*, 771 S.W.2d 812, 816 (Ky. 1989). Section fifty-one would have been violated where the reenactment title was insufficiently related to a medical malpractice claim. *Id.* At that time, the title of the act was “AN ACT relating

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