


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

NOV 25 2002

ROBERT D. DAVIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY  DEPUTY

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION, et al.,)

Plaintiffs,)

Master Docket

vs.)

CIV-02-92-C

(consolidated with CIV-02-100-C)

VOSS ELECTRIC COMPANY d/b/a)

VOSS LIGHTING,)

Defendant.)

DOCKETED

ORDER

Before the Court are Defendant's Motion to Compel Production of Documents from Dr. John Rahal, M.D.; Defendant's Motion to Compel Production of Documents from Dr. David E. Linden; and Defendant's Motion to Compel Production of Documents from Dr. Ed Beckham.

According to Defendant, each of the above named medical providers was served with a subpoena *duces tecum* seeking copies of medical records of Plaintiff Rick Eiland. Defendant asserts that each doctor has either failed to respond to the subpoena or refused to produce the medical records, citing the physician-patient privilege. Defendant filed the present motion seeking a court order requiring the doctors to produce Mr. Eiland's medical records. Although the date to respond has passed, neither Plaintiffs nor the subpoenaed doctors have filed a response or sought additional time to respond. Therefore, pursuant to LCvR 7.2(e) Defendant's motion is deemed confessed. Dr. John Rahal, Dr. David E. Linden,



and Dr. Ed Beckham are ORDERED to produce the records sought by Defendant's subpoena *duces tecum* within 30 days of the date of this Order.

Relying on Fed. R. Civ. P. 37(a)(4)(A), Defendant seeks an award of attorney's fees and costs associated with the present motion. The Court declines to enter such an award. Rule 37(a)(4)(A) requires an award unless the Court finds the opposing party's nondisclosure was substantially justified. Here, in the absence of a release or waiver signed by Mr. Eiland or a court order, the doctors were prohibited from releasing the sought after records. Thus, the failure to respond to Defendant's subpoena *duces tecum* was substantially justified.

Defendant's Motion to Compel Production of Documents from Dr. John Rahal, M.D.; Defendant's Motion to Compel Production of Documents from Dr. David E. Linden; and Defendant's Motion to Compel Production of Documents from Dr. Ed Beckham are GRANTED. These doctors are ORDERED to produce the records sought by Defendant's subpoena *duces tecum* within 30 days of the date of this Order. Defendant's request for Fed. R. Civ. P. 37(a)(4)(A) attorney's fees and costs is DENIED.

IT IS SO ORDERED this 25 day of November, 2002.


ROBIN G. CAUTHRON
CHIEF UNITED STATES DISTRICT JUDGE