

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

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CIV-03-1363-R
)	
CITGO PETROLEUM)	
CORPORATION,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant Citgo Petroleum Corporation's motion to compel the Jason Clark, on whose behalf the Equal Opportunity Commission (EEOC) has brought this action, to execute a HIPAA-compliant medical release or, in the alternative, sign a Qualified Protective Order authorized under HIPAA. In support of its motion in this ADA case, Defendant asserts that Mr. Clark's medical records are not privileged under federal common law but that even if a privilege did exist, such as Oklahoma's physician-patient privilege, the privilege does not apply when a party's medical condition is at issue in the case. Defendant further asserts that Clark's medical records are directly relevant to the claims asserted by the EEOC and to Citgo's defenses. Finally, Defendant asserts that a medical release is the only method by which Defendant may conduct discovery on Mr. Clark's medical records. In this regard, Defendant states that in the experience of its counsel, medical providers will not provide medical information absent a HIPAA-compliant medical release or court order.

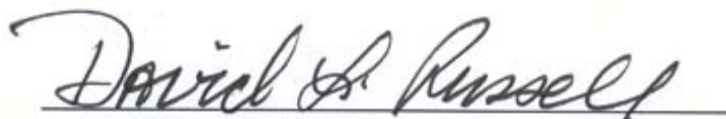
In response to Defendant's motion, the EEOC asserts that Defendant has failed to carry its burden of showing how medical records unrelated to Mr. Clark's acute juvenile retinoschisis, the condition which the EEOC asserts is Clark's disability, is relevant to the claims and defenses herein. Secondly, it asserts that Mr. Clark is entitled to assert a claim of privilege under state law and/or HIPAA as to medical records for conditions unrelated to the claims in this suit, which Mr. Clark has not waived. The EEOC further asserts that Defendant's motion is moot as to medical records for the treatment of emotional distress because Mr. Clark has not sought or received treatment from any counselors, therapists, psychiatrists, psychologists, ministers, clergy or other mental health professionals. Finally, the EEOC asserts that an unrestricted general medical authorization is an unauthorized form of discovery.

The Court finds it unnecessary to reach the issues of whether Mr. Clark's medical records are privileged and whether federal or state law governs the existence of a patient-physician privilege. This is so because there is no dispute between the parties but that even if Mr. Clark's medical records are privileged, the privilege has been waived as to medical records relating to the condition at issue in this case – Mr. Clark's juvenile retinoschisis. Moreover, the Court agrees with the EEOC that Defendant has failed to show how Plaintiff's medical records not related to that condition are relevant to any claim or defense herein or might lead to the discovery of admissible evidence. Finally, although medical records pertaining to any consultation or treatment Mr. Clark received for emotional distress or a mental or psychological condition would be relevant to the EEOC's claim for emotional

distress, the EEOC has in effect represented that there are no such records because Mr. Clark has not sought or received treatment for such. Accordingly, Defendant's motion to compel as it pertains to a release for such medical records is moot.

In accordance with the foregoing, the EEOC is directed to provide to Defendant a list of the physicians and other health care providers whom plaintiff has consulted and/or received treatment from for his condition of juvenile retinoschisis and to cause Mr. Clark to execute HIPAA-compliant releases in the form set forth in Exhibit "1" to Defendant's motion but specifically directed to those physicians and other health care providers only. Consistent herewith, Defendant's motion to compel is GRANTED in part and DENIED in part.

IT IS SO ORDERED this 7th day of July, 2004.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE