OAH 28-0900-39839

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Correction Order and Fines Issued to The Meadows of Wadena Senior Living	**ORDER ON RESPONDENT'S REQUESTS FOR SUBPOENAS FOR PRODUCTION OF DOCUMENTS**

This matter came before Administrative Law Judge Joseph C. Meyer on July 18, 2024, upon the Respondent's filing of three requests for subpoenas duces tecum to compel the production of documents.

Kevin Jonassen, Assistant Attorney General, represents the Department of Health (Department). Pari I. McGarraugh and Kara Ellingson, Fredrickson & Byron, P.A., represent The Meadows of Wadena Senior Living (Respondent).

Based upon the submissions of the parties and the hearing record, and for the reasons set forth in the attached Memorandum,

IT IS HEREBY ORDERED:

The Respondent's requests for subpoenas duces tecum to compel the production of documents are **DENIED**.

Dated: August 1, 2024

JOSEPH C. MEYER
Administrative Law Judge

MEMORANDUM

I. Introduction and Standard

This matter concerns a fine assessed based on allegations that an assisted living facility failed to conduct proper assessments for two residents' use of bedrails.[1] The Respondent seeks three subpoenas duces tecum compelling the production of documents from three different entities.[2] The three subpoena requests are identically phrased requests directed to three different entities, seeking "[a]ll documents and communications reflecting the treatment or care of" two patients.[3]

Minn. R. 1400.6700, subp. 2 (2023), provides that in a contested case, "[a]ny means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota is allowed." When considering whether to grant a party's request for discovery, "the judge shall recognize all privileges recognized at law."[4] Admissible evidence "possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs."[5]

Minn. R. 1400.7000 (2023) addresses subpoenas in contested cases. Subpoenas may be issued for the purpose of discovery.[6] A request for a subpoena must include "a brief statement demonstrating the potential relevance of the testimony or evidence sought."[7] A subpoena is not appropriate if it is unreasonable or oppressive, taking into account: (1) the issues or amounts in controversy; (2) the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case; and (3) whether there are alternative methods of obtaining the desired testimony or evidence.[8] Further, any person served with a subpoena may file an objection with the judge.[9]

Minn. R. Civ. P. 26.02(b) establishes the permissible scope of discovery. The rule reads:

> 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

[1] Notice and Order for Hr'g and Prehearing Conference.
[2] Respondent's Req. for Subpoenas (July 18, 2024).
[3] *Id.*
[4] Minn. R. 1400.6700, subp. 2 (2022).
[5] Minn. R. 1400.7300, subp. 1 (2022).
[6] Minn. R. 1400.7000, subp. 1.
[7] Minn. R. 1400.7000, subp. 1.
[8] Minn. R. 1400.7000, subp. 3.
[9] Minn. R. 1400.7000, subp. 3.

outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Minn. R. Civ. P. 26.02 extends the scope of discovery to inadmissible evidence "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."[10]

II. Analysis

The Respondent's requests are insufficient to support the issuance of subpoenas because they fail to include "a brief statement demonstrating the potential relevance of the testimony or evidence sought," as required by Minn. R. 1400.7000, subp. 1. In the section of the Subpoena Requests Forms that prompt a party to provide "Relevancy of Testimony or Document to be Subpoenaed," the Respondent did not include any discussion or description of how the requested information was relevant to this proceeding. Instead, the Respondent simply stated the documents that it was requesting from the non-parties to this proceeding.

Furthermore, the relevance of the requested documents is not obvious from the request itself. The three subpoena requests seek "all documents and communications reflecting the treatment or care of" two patients from three different entities.[11] The two patients described in the requests appear, based on the Respondent's Request for Reconsideration of Correction Order,[12] to be the two patients whose care is at issue in this proceeding. However, the requests do not provide any information as to the relationship between the three entities from which documents are being sought and the parties or issues in this proceeding.

Additionally, even if the Respondent were to demonstrate that some of the requested documents were relevant or reasonably calculated to lead to the discovery of relevant information, the request for documents is very broad. If some aspect of the patients' treatment or care were relevant to this proceeding, that likely would not support a request for *all* documents reflecting the treatment or care of those patients. Such a request would need to demonstrate that the benefit of such discovery is not outweighed by its burden or expense.

Because the subpoena requests failed to make any showing of the relevance of the requested information, the Respondent's requests for subpoenas duces tecum are **DENIED**.

J. C. M.

[10] *See Ramsey County v. S. M. F.*, 298 N.W.2d 40 (Minn. 1980).
[11] Respondent's Req. for Subpoenas (July 18, 2024).
[12] Req. for Reconsideration of Correction Order (Apr. 5, 2024).