OAH 82-0906-34568

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PHARMACY

In the Matter of MasterPharm, LLC

ORDER DENYING MASTERPHARM'S MOTION TO COMPEL

This matter came before Administrative Law Judge Barbara J. Case pursuant to a motion to compel brought by MasterPharm, LLC. MasterPharm filed its motion on April 11, 2018, and the Minnesota Board of Pharmacy Committee on Professional Standards (Committee) responded on April 24, 2018. The motion record closed on that date.

Hans A. Anderson, Assistant Attorney General, represents the Committee. Christianna L. Finnern, David M. Aafedt, and Gerald H. Fornwald, Winthrop & Weinstine, P.A., represent MasterPharm, LLC (Respondent).

Based on the submissions of counsel and for the reasons articulated in the attached Memorandum, the Administrative Law Judge issues the following:

ORDER

MasterPharm's motion to compel is **DENIED**.

Dated: May 9, 2018

BARBARA J. CASE
Administrative Law Judge

MEMORANDUM

MasterPharm moves the Administrative Law Judge to issue an Order compelling (1) the Committee to produce unredacted and complete copies of previously produced discovery, and (2) four previously noticed depositions that the Administrative Law Judge quashed in a February 23, 2018, Order. MasterPharm's Motion is denied.

I. Procedural History

The first discovery dispute at issue arises from the Committee's answers to written discovery dated December 19, 2017. Following receipt of the Committee's discovery responses, MasterPharm contacted the Committee with concerns about deficiencies - unexplained ("scribbled out") redactions and page omissions - in the Committee's production.[1] The Committee responded by producing pages inadvertently omitted originally and asserting that the "scribbled out" redactions present in the documents "were not made by the Committee," which "only redacted complainant identifiers and patient identifiers."[2] The Committee's response included a "patient key" and asked MasterPharm to "please explain" if it "believe[d] it need[ed] additional patient identities to prepare its defense."[3]

The second discovery dispute at issue arises from the December 8, 2017, deposition notices of three Committee representatives and a fourth notice of a 30.02(f) deposition.[4] On December 26, 2017, the Committee moved to cancel the subpoenas and quash the deposition notices.[5]

On February 23, 2018, the Administrative Law Judge issued an Order concluding that the four "noticed depositions [were] not essential to the preparation of Respondent's case" because MasterPharm "ha[d] obtained information sufficient to prepare a defense from the Committee's interrogatory answers, indicating that the discovery sought was available from another source," and because "additional deposition testimony regarding the substance of the matters covered in the interrogatory answers would [have been] cumulative."[6] The February 23, 2018, Order noted that MasterPharm was "not precluded from submitting a motion to compel, assuming it [could] articulate specific deficiencies in the Committee's interrogatory answers, possibly necessitating a deposition."[7]

MasterPharm filed the present Motion to Compel on April 11, 2018.

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[1] Committee's Mem. at Ex. N.
[2] *Id.* at Ex. O.
[3] *Id.*
[4] *Id.* at Exs. F-I.
[5] *Id.* at Ex. M.
[6] Order Granting the Board of Pharmacy's Motion to Cancel Deposition Notices (Feb. 23, 2018).
[7] *Id.*

II. Analysis

MasterPharm asks that the Committee be compelled "to produce unredacted and complete copies of the documents used to rely on the Committee's decision to take disciplinary action against MasterPharm."[8]

In its brief and associated exhibits, the Committee explains that page-numeration discrepancies account for most of the supposedly missing pages, and further states that it has provided the small number of pages that were inadvertently omitted from its production.[9] Furthermore, the Committee maintains that it is not responsible for the "scribbled out" redactions.[10] In short, it is the Committee's position that it has made a full production.

The record demonstrates that the Committee has been responsive to MasterPharm's requests to clarify possible deficiencies in its production and has provided MasterPharm with further means to obtain more information, such as a "patient key" containing complainant information.[11] Because the Committee has plainly stated that it has produced everything that MasterPharm is entitled to have, and has submitted sworn statements that it either has already or cannot provide the "unredacted" or "complete" copies that MasterPharm seeks, MasterPharm has not identified any further documents that the Administrative Law Judge could compel the Committee to produce.

MasterPharm also asks the Administrative Law Judge to compel Committee representatives to sit for four depositions. As previously noted, the February 23, 2018, Order stated that MasterPharm was "not precluded from submitting a motion to compel, assuming it [could] articulate specific deficiencies in the Committee's interrogatory answers, possibly necessitating a deposition."[12] MasterPharm argues that it is entitled to take these depositions for two reasons.

First, MasterPharm argues that deficiencies in the Committee's document production entitles it to take the depositions. Because the Committee's sworn position is that it has produced every document to which MasterPharm is entitled, and in as unredacted a form as possible, MasterPharm has not persuaded the Administrative Law Judge that further sworn testimony is needed.

Second, MasterPharm points to purported contradictions between the Committee's allegations of misconduct and witness testimony as justification for the noticed depositions. The Administrative Law Judge finds this line of argument unpersuasive. MasterPharm raised this same point in the motion briefing that led to the February 23, 2018, Order.[13] Despite the February 23, 2018, Order's mandate to

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[8] MasterPharm's Mem. at 1.
[9] Committee's Mem. at Ex. U.
[10] *Id.*
[11] *See* Committee's Memo. at 3, Ex. O.
[12] *Id.*
[13] Memo. of Law in Opposition to Committee's Motion to Quash Deposition Notices and Cancel Subpoenas (Jan. 11, 2018), at 14-15.

"articulate specific deficiencies in the Committee's interrogatory answers," MasterPharm's current Motion simply raises the same arguments that the Administrative Law Judge has already rejected.

For the foregoing reasons, MasterPharm's Motion to Compel is denied in its entirety.

B. J. C.