

City of Chicago
Commission on Human Relations
510 N. Peshtigo Ct., 6th Floor
Chicago, IL 60611
(312) 744-4111 [voice]/(312)/744-1088 [TTY]

IN THE MATTER OF)
)
Shawn Nadeau, Michelle LeBeau)
and Stefanie Warren)
)
COMPLAINANTS,) Case Nos. 96-E-159/160/161
)
AND)
)
Steven E. Suson D.C. and)
Family Physicians Center, Ltd.) Issued: April 21, 1997
)
RESPONDENTS.)

Served by Facsimile and U.S. Mail

To:

Michael Krause
Bollinger Ruberry and Garvey
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Chicago, IL 60661
Facsimile (312) 466-8001

Lilli R. Kornblum
Clinic Director
Family Physicians Center
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ORDER

This Order will resolve the following matters: (1) Respondents' request to postpone the proceedings in this case; (2) Complainants' Motion to Compel Production of Documents; (3) Complainants' Motion to Compel Preliminary Witness List; and (4) Complainant's objections to Lilli R. Kornblum serving as Respondents' advocate.

1. Respondents' Motion for Postponement.

On April 2, 1997, Respondents requested a three month postponement of all proceedings because Dr. Suson had recently undergone brain surgery. On April 9, 1997, Respondents submitted a disability insurance statement signed by Dr. Leonard Cerullo in support of this request. Complainant opposed the postponement in submissions dated April 8 and 14, 1997. On April 17, 1997, Respondents provided an additional statement from Dr. Cerullo, dated April 16, 1997, at my request. Complainants responded to this additional information on April 17.

Dr. Cerullo's statements establish that Dr. Suson first experienced symptoms of a brain tumor on March 14, 1997, that Dr. Suson consulted Dr. Cerullo on March 18, 1997 and that surgery was performed on March 21, 1997 for removal of a Glioblastoma. Dr. Cerullo further states that Dr. Suson is currently being treated

with chemotherapy, radiation therapy, a steroid, an anticoagulant and a hydroblocker. In his April 16 statement, Dr. Cerullo concludes as follows:

Accordingly, I do not believe that Dr. Suson will be fully competent to participate in a pre-trial procedure scheduled for May 15, 1997. Likewise, I feel it is unlikely that the effects of the treatments will allow his complete participation in the administrative hearing scheduled for May 29, 1997.

Complainants' argue that Dr. Cerullo's April 16 statement is not sufficiently specific to support a postponement. Complainants contend that Dr. Cerullo provided only a "general explanation as to the type of treatment Dr. Suson is currently undergoing, without any interpretation of any debilitating effects Dr. Suson is experiencing that would prevent him from taking part in this matter" (Complainants' April 17, 1997 response, par. 7).

I have concluded that Dr. Cerullo's April 16 statement provides a sufficiently specific basis on which to postpone the May 15, 1997 pre-hearing conference and the May 29 and 30, 1997 administrative hearing. Dr. Suson is a named Respondent; he is the individual accused of the conduct alleged in the Complaint. Dr. Cerullo is Dr. Suson's treating physician. In the absence of contradictory medical evidence, his medical opinion is determinative as to Dr. Suson's ability to meaningfully participate in the pre-hearing conference and hearing.

Dr. Cerullo also stated that he could not estimate "the date that [Dr. Suson] can be anticipated to have recovered his mental faculties fully. ... It depends on the tumor's response to radiation therapy, his brain's response to the radiation and medications, and the possible development of complications to treatment" (April 16, 1997 statement). As a result, a status conference will be held to address the future schedule for this case.

IT IS THEREFORE ORDERED that:

(1) the May 15, 1997 pre-hearing conference and the May 29-30, 1997 hearing are postponed indefinitely;

(2) **by June 16, 1997**, Respondents are to provide an updated medical statement of Dr. Suson's condition and his ability to participate in a pre-hearing conference and hearing. That statement is to be telefaxed and mailed to the Hearing Officer and Complainants counsel, and is to be sent by U.S. Mail to the Commission;

(3) a telephonic status conference will be held on **June 20, 1997 at 10:00 a.m.** to discuss Dr. Suson's medical condition and to review the issue of setting dates for the pre-hearing conference and hearing. The parties are to make the arrangements for this

telephone conference call;

(4) except as specifically addressed below, the pre-hearing schedule set in my February 18, 1997 Order is postponed indefinitely.

Complainants have proposed that the parties be afforded another opportunity to resolve this dispute through conciliation. I endorse that proposal. Through this Order, I am requesting the Commission to explore additional conciliation discussions.

2. Complainants' Motions to Compel Production of Documents and to Compel Respondents to submit its Preliminary Witness List.

Paragraph 1 of the February 18, 1997 Scheduling Order established deadlines for document production. Complainants served a timely First Request for Production of Documents on March 7, 1997. Respondents' objections to that document request were to be served within 10 days after receipt of that request. In addition, Respondents were to respond to the document request no later than 21 days after the request was served (February 18, 1997 Order, par. 1).

Respondents did not file objections to or respond to Complainants' document request. On April 3, 1997, Complainants submitted a Motion to Compel production of Respondents' response.

Further, under paragraph 2 of the February 18 Order, each party was to submit its Preliminary Witness List by April 3, 1997. Complainants submitted their list on March 27, 1997. No such list has been tendered by Respondents. On April 10, 1997, Complainants filed a Motion to Compel Preliminary Witness List.

Respondents did not respond to either motion. In both cases, Complainants have requested the imposition of sanctions under Section 240.463 of the Commission's Rules and Regulations.¹

The onset of Dr. Suson's illness and surgery coincided with the time period in which Respondents' should have responded to Complainants' document request and should have submitted a Preliminary Witness List. As a result, no sanctions will be imposed on Respondents.

However, Respondents have not established that Dr. Suson's current illness precludes them from responding to Complainant's document request or submitting a Preliminary Witness List.

¹ Complainants' document request was mailed to Respondents' then-attorneys of record, who were allowed to withdraw as counsel on March 23, 1997. On April 4, 1997, I directed Complainants to telefax an additional copy of that document request to Respondents.

IT IS THEREFORE ORDERED that:

(1) Respondents' objections to Complainants' First Request for Production of Documents, if any, are to served no later than **May 2, 1997**. These objections are to served by telefax and U.S. Mail on the Hearing Officer and Complainants, and by U.S. Mail on the Commission;

(2) Respondents' response to Complainants' First Request for Production of Documents is to be served on Complainants by **May 21, 1997**; telefax service is not required. Respondents are to serve on the Hearing Officer and Commission evidence that Respondents' have served their response on Complainants; however, Respondents are not to serve the contents of their response on the Hearing Officer or the Commission;

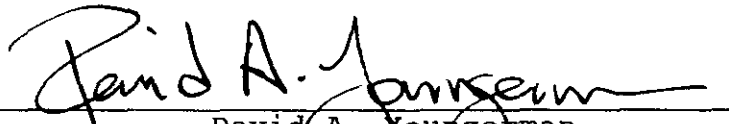
(3) Respondents are to submit their Preliminary Witness List by **May 9, 1997**. This submission is to be served on Complainants and the Hearing Officer by telefax and U.S. Mail, and on the Commission by U.S. Mail.

(4) Respondents will be subject to sanctions under Section 240.463 if they do not comply with these provisions of this Order.

3. Complainants' objection to Lilli R. Kornblum serving as Respondents' advocate.

On April 8, 1997, Complainants objected to Ms. Kornblum serving as Respondents' advocate since she is not a licensed attorney. Respondents, however, can choose to be represented "by counsel or other representative at any stage of the proceedings before the Commission...." (Section 270.310 of the Commission's Rules and Regulations). Complainants also object because Ms. Kornblum may be a witness at the administrative hearing. That possibility, however, does not preclude her from serving as Respondents' advocate.

By: _____



David A. Youngerman
Hearing Officer

for: Chicago Commission on Human Relations

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