

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

IN RE: KUGEL MESH HERNIA :
REPAIR PATCH LITIGATION :
: MDL No. 07-1842ML
THIS DOCUMENT RELATES TO: :
Brezeale, No. 08-2564ML :

MEMORANDUM AND ORDER

This is yet another dispute regarding the “agreed” Plaintiff Fact Sheet (“PFS”) which seems anything but “agreed.” The PFS has been adopted and implemented by Orders of Chief Judge Lisi. (See, e.g., Document Nos. 59 and 66). Currently pending before the Court for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants’ Motion to Compel Plaintiff Cathy Brezeale to provide certain records authorizations omitted from Brezeale’s PFS submission. (Document No. 1314). A hearing was held on November 3, 2008.

The PFS (Section XI.A) requires Plaintiffs to provide seven categories (Exs. A-G) of records authorizations. The PFS requires Plaintiffs to swear to the truth of their responses and to affirm that they “have supplied the records authorizations requested in and attached to this Fact Sheet.” Exhibit A consists of medical records authorizations directed to examining, treating and consulting health care practioners. Exhibit B consists of blank¹ medical records authorization forms for care at a V.A. facility. Exhibit C consists of blank records authorization forms for health insurance records. Exhibit D consists of blank records authorization forms for employment records. Exhibit E consists of a records authorization form for Social Security records. Exhibit F consists of a records

¹ The PFS (in Exhibits B, C and D) requests authorizations “leaving blank the name to whom the release is directed.”

authorization form for disability insurance or workers' compensation benefit claims. Exhibit G consists of records authorization forms for income tax returns. Exhibit H consists of a records authorization form for military records "[i]f you have served in the military."²

Defendants' Motion seeks to compel Plaintiff Brezeale to produce the authorizations set forth in Exhibits A, C, D, E, F and G to the PFS. Defendants' Motion is denied as to Exhibit A, as the PFS does not require the execution of blank medical records authorization forms. Defendants' Motion is granted as to Exhibits C and D, as the PFS unconditionally provides for the execution of blank records authorization forms in those two categories. Defendants' Motion is granted as to Exhibits E and F, as the PFS unconditionally provides for the execution of records authorization forms in those two categories. Finally, Defendants' Motion is granted as to Exhibit G, as Plaintiff Brezeale is asserting a claim of lost earnings and nothing in the PFS permits a Plaintiff to produce W-2 forms as an alternative to income tax returns.

The purpose of the PFS is to introduce some uniformity and efficiency to this MDL case. If every Plaintiff were permitted to debate the scope of the PFS as it applies to his or her particular case, the benefits of uniformity and efficiency are lost. As I stated in connection with a prior dispute regarding Exhibit G to the PFS (income tax return authorizations):

If Plaintiffs wish to revise the PFS that they agreed to, and that was adopted and approved by the Court, then unilaterally refusing to execute the required authorizations for certain Plaintiffs and triggering a motion to compel is not the appropriate route.

Text Order dated May 2, 2008. Nothing has occurred in the past six months to change the Court's position on that point.

² Only Exhibit H conditionally provides that the authorization be provided only "if" a certain precondition is true.

For the reasons stated herein, Defendants' Motion to Compel (Document No. 1314) is GRANTED in part and DENIED in part. In particular, Plaintiff Brezeale shall, within twenty (20) days, provide to Defendants' counsel the signed authorizations required by the PFS (Exhibits C, D, E, F and G) as specified herein.

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
November 7, 2008