

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

**NOTICE OF MOTION AND MOTION OF DEFENDANT JENNIFER KING VASSEL
FOR ENTRY OF A HIPAA QUALIFIED PROTECTIVE ORDER**

PLEASE TAKE NOTICE that defendant Jennifer King Vassel, by her attorneys Gutglass, Erickson, Bonville, & Larson, S.C., moves the United States District Court for the Eastern District of Wisconsin, the Honorable J.P. Stadtmueller, District Judge presiding, for entry of a HIPPA qualified protective order.

PLEASE TAKE FURTHER NOTICE that this motion is based upon the Brief of Defendant Jennifer King Vassel in Support of the Motion and Affidavit of Bradley S. Foley in Support of the Motion, which are being filed simultaneously herewith.

Dated this 14th day of October, 2013 at Milwaukee, Wisconsin.

**GUTGLASS, ERICKSON, BONVILLE,
& LARSON, S.C.**

s/Bradley S. Foley

Mark E. Larson (#1016423)

Bradley S. Foley (#1026871)

Attorneys for Defendant Jennifer King Vassel

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

**DEFENDANT JENNIFER KING VASSEL'S BRIEF IN SUPPORT OF
ENTRY OF AN HIPAA QUALIFIED PROTECTIVE ORDER**

Defendant Jennifer King Vassel (Dr. King), by her attorneys, Gutglass, Erickson, Bonville & Larson, S.C., respectfully moves for entry of a HIPAA qualified protective order for medical records from health care providers other than Dr. King that treated N.B. during the time period alleged in the complaint, 2004 to 2008. Dr. King requests an order similar to the order entered in response to the plaintiff's request for a HIPPA qualified protective order. *See* (Documents 116 and 117).

In particular, the records of the following health care providers are requested: the Mendota Mental Health Institute; Rogers Memorial Hospital - Brown Deer; various physicians at the Cedar Mills Medical Group; The Wholistic Health Center; Basil Jackson, M.D.; Bruce Semon, M.D.; Lauren Youngs, M.D.; Inshirah Farhoud, APNP; Mark Simms, M.D.; and Todd Eldon, Ph.D. Moreover, the prescription medication records of Wal-Mart Pharmacy -Saukville, Managed Health Services, Wisconsin ForwardHealth, and BioScrip PBM Services, LLC are also requested.

ARGUMENT¹

Dr. King is requesting these records in order to ascertain all of the health care providers that provided care and treatment to N.B., or provided prescription medication services to N.B., during the time period alleged in the complaint, from 2004 to 2008. These records are relevant in determining whether N.B. received prescription medications from any health care provider other than Dr. King, what prescription medications were prescribed, and how payment was made for those prescriptions. Fed. R. Evid. 401; Fed. R. Civ. P. 26(b)(1). These records may help establish that health care providers other than Dr. King also prescribed the medications alleged in the complaint and support her contention that off-label use of prescription medications can be reimbursed by a state Medicaid program. “In either situation [whether Wisconsin can reimburse for non-FDCA (Food, Drug, and Cosmetic Act), non-compensated prescription medications], such information would be relevant to determining whether King Vassel had the required level of knowledge to be found liable for having submitted a false claim.” (Document 116, p. 5).

The limited discovery that has occurred in this case to date establishes that N.B. saw health care providers other than Dr. King during the time period alleged in the complaint. The plaintiff, in his initial disclosures, provided some medical records and some of the claims history report for N.B. *Affidavit of Bradley S. Foley, Exhibit B, Relator’s Initial Disclosures, p. 2 (excluding attachments)*². The ForwardHealth claims history report has Carol Estill, M.D. handwritten on the first page of the

¹An attempt was made to resolve these issues prior to filing this motion, but without success. *Affidavit of Bradley S. Foley, Exhibit A, Emails between Counsel for the Plaintiff and Dr. King*. In sum, the plaintiff contended that the records requested here are not relevant, and that Dr. King must obtain a HIPPA qualified protective order similar to the one recently ordered by the Court. *See* (Documents 116 and 117).

²The attachments can be provided to the Court under seal, as Dr. King is requesting a HIPPA qualified protective order in this motion.

report. *Id.* Dr. Estill is a physician that practiced at Cedar Mills Medical Group, as did Dr. Hagen and Dr. Montgomery, as evidenced in the Encompass-Effective Mental Health Services, Inc. medical records. These records are not enclosed but can be provided under seal. *See* footnote number two.

The Encompass medical records reference numerous health care providers and prescription medication services that have not been previously disclosed. They are listed below:

- Wal-Mart Pharmacy
- Managed Health Services
- BioScrip PBM Services, LLC
- Wholistic Health Counseling Services
- Rogers Memorial Hospital-Brown Deer
- Mendota Mental Health Institute
- Todd Eiden, Ph.D.

The remaining health care providers listed on the first page of this brief, and not listed directly above, were obtained from the initial disclosures of Encompass. *Affidavit of Bradley S. Foley, Exhibit C, Encompass Effective Mental Health Services, Inc.'s Initial Disclosures, pp. 2-4.* As Encompass alleges, its initial disclosures named witnesses that may have had knowledge of facts alleged in the complaint, or the defendant's response. *Id.*, p. 1. Thus Dr. King only is aware that Basil Jackson, M.D., Bruce Semon, M.D., Lauren Youngs, M.D., Inshirah Farhoud, APNP, and Mark Simms, M.D. provided care and treatment to N.B. based on Encompass's initial disclosures. *Encompass's Initial Disclosures, pp. 3-4.*

Dr. King has tried to obtain medical records of N.B.'s health care providers other than Dr. King, but the plaintiff has refused to answer. In response to Dr. King's first set of interrogatories, number nine, the plaintiff declined to name any health care providers who treated N.B. for any physical or mental health condition in the last 10 years. *Affidavit of Bradley S. Foley, Exhibit D, Plaintiff's Responses to Dr. King's First Set of Interrogatories, Number Nine.* The plaintiff stated

that N.B.'s treatment history is "unrelated and completely irrelevant to the issues in this litigation [. . .]" *Id.*

Further, the plaintiff testified that he will not permit discovery of any other health care providers that may have provided care and treatment for N.B., during the time period alleged in the complaint.

Q: Between 2004 and 2008 do you know if there were any gaps in time when he [N.B.] was being treated by someone other than Dr. King for mental health issues?

[. . .]

A: I don't think I can tell you. **But I can tell you that I do know that he was seen by other mental health professionals during that time period.**

Q: What is it that you're referring to to refresh your recollection here in this deposition?

A: I saw a mental health note from another agency during the time period that you asked that would indicate that he was, in fact, seen or treated.

Q: But you won't identify that nor disclose the document to me?

A: Yeah.

Affidavit of Bradley S. Foley, Exhibit E, Deposition of the Plaintiff, pp. 54-55 (emphasis added).

The plaintiff also refused to provide the names of health care providers besides Dr. King that treated N.B. in response to her request for production of documents, number eight. *Id.*, p. 62; *Affidavit of Bradley S. Foley, Exhibit D, Plaintiff's Response to Dr. King's First Request for Production of Documents, Number Eight*. The plaintiff stated that he did not think "I have the right to release it [the identity of healthcare providers] without her [N.B. mother's] permission saying, hey, you can disclose this information. So, yeah, it's kind of HIPPA, I think, protected." *Deposition of the Plaintiff*, p. 62.

The plaintiff admits that N.B. was treated by other health care providers besides Dr. King during the time period alleged in the complaint, yet he refuses to permit an authorization to be signed

to allow access to records of treatment of N.B. “The Supreme Court has interpreted relevance broadly to include any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.” *U.S. ex rel. Camillo v. Ancilla Systems, Inc.*, 233 F.R.D. 520, 522 (S. D. Ill. 2005) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). Accordingly, this motion should be granted.

CONCLUSION

Based on the foregoing arguments, defendant Jennifer King Vassel respectfully requests that the Court grant her motion and permit her to obtain N.B.’s records from Mendota Mental Health Institute; Rogers Memorial Hospital - Brown Deer; the Cedar Mills Medical Group; The Wholistic Health Center; Basil Jackson, M.D.; Bruce Semon, M.D.; Lauren Youngs, M.D.; Inshirah Farhoud, APNP; Mark Simms, M.D.; Todd Eldon, Ph.D.; Wal-Mart Pharmacy -Saukville; Managed Health Services; Wisconsin ForwardHealth; and BioScrip PBM Services, LLC.

This motion is made within the context of a HIPPA protective order, as the Court permitted in response to the plaintiff’s second motion for a HIPPA qualified protective order. (Document 117). “HIPPA permits protected health information to be revealed in response to a discovery request, if the parties agree to a protective order and have presented it to the Court, or have asked the Court for a protective order.” *Camillo*, 233 F.R.D. at 522 (citing 45 C.F.R. § 164.512(e)(1)).

Dated at Milwaukee, Wisconsin this 14th day of October, 2013.

**GUTGLASS, ERICKSON,
BONVILLE & LARSON, S.C.**

s/ Bradley S. Foley
Mark E. Larson (#1016423)
Bradley S. Foley (#1026871)
Attorneys for defendant Jennifer King Vassel

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

v.

Case No. 11-CV-236

JENNIFER KING VASSEL,

Defendant.

**AFFIDAVIT OF BRADLEY S. FOLEY IN SUPPORT OF
DEFENDANT JENNIFER KING VASSEL'S MOTION FOR
ENTRY OF A HIPAA QUALIFIED PROTECTIVE ORDER**

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

BRADLEY S. FOLEY, being duly sworn under oath, deposes and states as follows:

1. I am one of the attorneys representing defendant Jennifer King Vassel in the above-referenced action and am authorized to make this affidavit on her behalf.
2. Attached as Exhibit A is a true and accurate copy of an October 8, 2013 email exchange with counsel for the plaintiff.
3. Attached as Exhibit B is a true and accurate copy of the Relator's Initial Disclosures, excluding attachments.
4. Attached as Exhibit C is a true and accurate copy of Encompass Effective Mental Health Services, Inc.'s Initial Disclosure of Witnesses and Documents.

5. Attached as Exhibit D is a true and accurate copy of the Relator's Response to Dr. King's First Set of Interrogatories and Request for Production of Documents, referencing interrogatory number nine and request for production of document number eight and excluding attachments.

6. Attached as Exhibit E is a true and accurate copy of selected portions of the May 4, 2012 deposition of the plaintiff.

s/Bradley S. Foley
Bradley S. Foley

Subscribed and sworn to before me
this 14th day of October, 2013.

s/Carrie Wentland
Notary Public, State of Wisconsin
My Commission expires: 1/19/14

Brad Foley

From: Jim Gottstein <jim.gottstein@psychrights.org>
Sent: Tuesday, October 08, 2013 1:22 PM
To: Brad Foley
Cc: jim.gottstein@psychrights.org; Rebecca Gietman; Dr. Toby Watson; Mark Larson
Subject: RE: Watson - health care record authorization

Hi Brad,

I am not totally closing the door to it, but I just don't see how these records can possibly be relevant. This case concerns for what use Dr. King prescribed drugs. Nothing else.

So, first you would need to show the records are relevant.

If you can do that, we would also want you to get a HIPAA qualified protective order with the same sorts of restrictions contained in the one pertaining to the discovery requests to Dr. King.

Speaking of which, we expect the records to be produced on or before October 16th. As the judge held, Dr. "Watson is entitled to take this discovery." Docket No. 116, p. 7.

James B. (Jim) Gottstein, Esq.
President/CEO



Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501 USA
Phone: (907) 274-7686 Fax: (907) 274-9493
jim.gottstein@psychrights.org
<http://psychrights.org/>

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging and electroshock. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging interventions against their will. Currently, due to massive growth in psychiatric drugging of children and youth and the current targeting of them for even more psychiatric drugging, PsychRights has made attacking this problem a priority. Children are virtually always forced to take these drugs because it is the adults in their lives who are making the decision. This is an unfolding national tragedy of immense proportions. Extensive information about all of this is available on our web site, <http://psychrights.org/>. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.



From: Brad Foley [mailto:bradley.foley@gebsc.com]
Sent: Tuesday, October 08, 2013 6:36 AM
To: jim.gottstein@psychrights.org
Subject: Watson - health care record authorization

Jim we would like to obtain the Mendota Mental Health Institute records. Could you please have Mrs. Maxwell Meyer sign the attached medical authorization and return to me?

Thanks
Brad

Bradley S. Foley
Gutglass, Erickson, Bonville & Larson, S.C.
735 North Water Street, Suite 1400
Milwaukee, WI 53202
414-908-0240

This e-mail message, and any attachment hereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any use, dissemination, distribution or copying of this e-mail message, and/or any attachment hereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender and permanently delete the original and any copy of this message, its attachments, and any printout thereof. Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA,

Ex rel. Dr. Toby Watson,

Plaintiff,

v.

Civil Action No.: 11-C-0236

**FALSE CLAIMS ACT
MEDICAID FRAUD**

JENNIFER KING-VASSEL,
Doing Business as CAPS CHILD & ADOLESCENT
PSYCHIATRIC SERVICES, AND ENCOMPASS
EFFECTIVE MENTAL HEALTH SERVICES, INC.

Defendants.

RELATOR'S INITIAL DISCLOSURES

The Relator make the following disclosures pursuant to Federal Rules of Civil Procedure 26(a)(1), without waiver of any applicable or potentially applicable privilege or protection. The Relator expressly reserves the right to supplement these disclosures and to introduce additional information in connection with any motion, hearing, or trial as discovery proceeds.

i. The name, and if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claim or defenses, unless the use would be solely for impeachment.

The following persons or entities may have discoverable information that the Relator may use to support his position. While these persons or entities may have discoverable information, Relator makes no representation as to their intent to rely upon this information in this action. Furthermore, the Relator has not yet determined the witnesses to be called in this action, and will make those disclosures pursuant to the Court's scheduling order.

A. Defendants Jennifer King – Vassel, CAP Services and Encompass Effective Mental Health Services, Inc. have information about the diagnoses of NB, prescriptions written for NB, and the Medicaid Health Coverage of NB. Addresses and phone numbers are known to the defendants.



B. Chris Maxwell Meyer is NB's custodial parent and has information about NB's age, the diagnoses of NB, prescriptions written for NB, the fulfillment of those prescriptions, and the Medicaid Health Coverage of NB. Ms. Maxwell-Meyer's address is W6929 S. County Road A, Adell, WI 53001, 920-980-3690.

C. Relator Dr. Toby Watson has information about NB's age, the diagnoses of NB, prescriptions written for NB, the Medicaid Health Coverage of NB, and the fulfillment of those prescriptions. Associated Psychological Health Services, 2808 Kohler Memorial Drive, Sheboygan, WI 53081, 920-457-9192.

D. ForwardHealth Member Services for the State of Wisconsin has information about the claims paid by ForwardHealth, Medicaid and/or BadgerCare Plus on behalf of NB. Wisconsin ForwardHealth, 6404 Bridge Road, Madison, WI 53784, 800-362-3002.

ii. A copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

The Relator is currently in the possession of documents that they may use to support their defenses. Please note that the Relator's investigation and case preparation are on-going, continuing efforts and that the Relator therefore reserves his rights to use any documents subsequently obtained or prepared. Further, the Relator makes no representations as to his intent to rely upon any of these disclosed documents in this action, and will make the disclosures of said documents as per the Court's scheduling order.

Drugdex reports regarding the complained-upon medications (electronically transferred);

NB's medical records, attached hereto;

Wisconsin ForwardHealth Medicaid and BadgerCare Plus Claims History Report, attached hereto.

<https://www.cms.gov/MSIS/Downloads/msisdd2010.pdf>

iii. A computation of each category of damages claimed by the disclosing party.


The Relator is computing these damages without the benefit of any discovery. The Relator reserves the right to amend its disclosures to add additional damages.

The Defendants can be assessed \$5500.00 - \$11,000.00 per fraudulent transaction, plus the cost the government paid due to the Defendants' actions. At this time, the Relator is aware of the Defendants causing 49 fraudulent transactions, and damages range from \$269,500-\$539,000. Trable damages may also be assessed.

iv. Any insurance agreement under which an insurance business may be liable.

The Relator, at this time, is not aware of any insurance agreement under which any persons carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in favor of Plaintiffs or to indemnify or reimburse Defendants for payments to satisfy the judgment.

February 23, 2012



Rebecca L. Gietman, WI Bar #1052401
805 S. Madison St.
Chilton, WI 53014
920-737-3036
GietmanLaw@gmail.com

On behalf of Relator Dr. Toby Watson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

vs.

Case No. 11-CV-236

JENNIFER KING VASSEL, CAPS
CHILD & ADOLESCENT PSYCHOLOGICAL
SERVICES, and ENCOMPASS EFFECTIVE
MENTAL HEALTH SERVICES, INC.,

Defendants.

**DEFENDANT'S ENCOMPASS EFFECTIVE MENTAL HEALTH SERVICES,
INC. INITIAL DISCLOSURE OF WITNESSES AND DOCUMENTS**

Defendant Encompass Effective Mental Health Services, Inc. by its
attorneys, Gimbel, Reilly, Guerin & Brown LLP, submits the following initial
disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1):

A. The names and addresses of all witnesses presently known to have
knowledge of the facts alleged in the complaint or defendant's response are:



1. All persons named by plaintiffs;
2. Cynthia Clark, Encompass Effective Mental Health Services, Inc., 1011 N. Mayfair Road, Suite 304, Wauwatosa, Wisconsin 53226. Cynthia Clark will testify as to the business relationship between Jennifer King Vassel and Encompass Effective Mental Health Services, Inc.;
3. Laura Schulz, Encompass Effective Mental Health Services, Inc., 1011 N. Mayfair Road, Suite 304, Wauwatosa, Wisconsin 53226. Laura Schulz will testify as to the business relationship between Jennifer King Vassel and Encompass Effective Mental Health Services, Inc.;
4. Jennifer R. King Vassel, M.D., Milwaukee Behavioral Health Services, 8200 W Silver Spring Drive, Milwaukee, Wisconsin 53218. Jennifer King Vassel will testify as to her business relationship with Encompass Effective Mental Health Services, Inc. and her care and treatment of N.B.;
5. N.B., 675 Western Avenue, Random Lake, Wisconsin 53075. N.B. will testify regarding the care and treatment he received from Jennifer King Vassel and Encompass Effective Mental Health Services, Inc.;
6. Chris Maxwell Meyer, 675 Western Avenue, Random Lake, Wisconsin 53075. Chris Maxwell Meyer will testify regarding the care and treatment N.B. received from Jennifer King Vassel and Encompass Effective Mental Health Services, Inc.;
7. Representative of Wal Mart Pharmacy, 825 E. Green Bay Avenue, Saukville, Wisconsin 53080. The representative will testify to the prescription records for medications for N.B.;
8. Representative of Managed Health Services, 10700 W. Research Drive, Suite 300, Milwaukee, Wisconsin 53226. The representative will testify regarding prescription orders authorized for and paid on behalf of N.B.;

9. Representative of BioScrip PBM Services, LLC, 2787 Charter Street, Columbus, Ohio 43228. The representative will testify regarding prescription orders authorized for and paid on behalf of N.B.;
10. Representative of Rogers Memorial Hospital, 4600 W. Schroeder Drive, Suite 2, Brown Deer, Wisconsin 53223. The representative will provide foundational testimony regarding the accuracy of medical records produced for N.B.;
11. Representative of Mendota Mental Health Center, 301 Troy Drive, Madison, Wisconsin 53704. The representative will provide foundational testimony regarding the accuracy of medical records produced for N.B.;
12. Carol Estill, M.D., Cedar Mills Medical Group, N143 W6515 Pioneer Road, Cedarburg, Wisconsin 53012. Dr. Estill will testify as to her care and treatment of N.B.;
13. Edwin Montgomery, M.D., Cedar Mills Medical Group, N143 W6515 Pioneer Road, Cedarburg, Wisconsin 53012. Dr. Montgomery will testify as to his care and treatment of N.B.;
14. Elizabeth Hagen, M.D., Cedar Mills Medical Group, N143 W6515 Pioneer Road, Cedarburg, Wisconsin 53012. Dr. Hagen will testify as to her care and treatment of N.B.;
15. Basil Jackson, M.D., W142 N7967 Thorndell Drive, Menomonee Falls, Wisconsin 53051. Dr. Jackson will testify as to his care and treatment of N.B.;
16. Bruce Semon, M.D., 1317 W. Towne Square Road, Suite 110N, Thiensville, Wisconsin 53092. Dr. Semon will testify as to his care and treatment of N.B.;
17. Laurens Young, M.D., 11514 N. Port Washington Road Suite 4, Mequon, WI 53092. Dr. Young will testify as to his care and treatment of N.B.;

18. Inshirah Farhoud, MSN, RN, APNP, Childrens Hospital of Wisconsin, Child Development Center, 13800 W. North Avenue, Suite 120, Brookfield, Wisconsin 53005. Ms. Farhoud will testify as to her care and treatment of N.B.;
 19. Mark Simms, M.D., 8701 W. Watertown Plank Road, Milwaukee, Wisconsin 53226. Dr. Simms will testify as to his care and treatment of N.B.;
 20. Todd Eldon, Ph.D., Phoenix Behavioral Health Services, LLC, 115 E. Waldo Boulevard, Manitowoc, Wisconsin 54220. Dr. Eldon will testify as to his care and treatment of N.B.
- B. The documents supporting defendant's defense are:
- a. All documents produced by plaintiffs;
 - b. Independent Contractor Agreement between Jennifer King Vassel and Encompass Effective Mental Health Services, Inc.;
 - c. Prior Authorization Approval requests from Managed Health Services;
 - d. Prior Authorization Approval requests from BioScrip PBM Services, LLC;
- C. The damages claimed are: None
- D. There are no insurance companies having liability coverage relating to the matters alleged in plaintiff's complaint.

Dated this ____ day of February, 2012.

GIMBEL, REILLY, GUERIN & BROWN

By:

s/Patrick J. Knight

PATRICK J. KNIGHT

State Bar No. 1003374

EMILY I. LONERGAN

State Bar No. 1070486

Attorneys for Defendant Encompass

Effective Mental Health Services, Inc.

POST OFFICE ADDRESS:

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Telephone: 414/271-1440

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA,
Ex rel. Dr. Toby Watson,

Civil Action No.: 11-C-0236

Plaintiff,

v.

**FALSE CLAIMS ACT
MEDICAID FRAUD**

RECEIVED

JENNIFER KING-VASSEL,
Doing Business as CAPS CHILD & ADOLESCENT
PSYCHIATRIC SERVICES, AND ENCOMPASS
EFFECTIVE MENTAL HEALTH SERVICES, INC.

APR - 5 2012

GUTGLASS, ERICKSON
BONVILLE & LARSON

Defendants.

RELATOR'S RESPONSE TO DEFENDANT JENNIFER KING VASSEL AND CAPS
CHILD & ADOLESCENT PSYCHOLOGICAL SERVICES FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Relator Dr. Toby Tyler Watson submits the following objections and responses to Defendant Jennifer King Vassel and CAPS Child & Adolescent Psychological Services' First Set of Interrogatories and Request for Production of Documents:

General Objections

The following General Objections apply to every paragraph if the Interrogatories:

1. Relator objects to every interrogatory that calls for privileged information including, without limitation, information protected by the attorney-client privilege.
2. Relator objects to every interrogatory that calls for the production of information containing or reflecting the mental impressions, conclusions, opinions and/or legal theories of any attorney for relator, on the grounds that such information is protected by the attorney work product doctrine.
3. Relator objects to every interrogatory that calls for information prepared in anticipation of litigation or for trial absent a showing of substantial need by Defendants.
4. Relator objects to every interrogatory that is overly broad, unduly burdensome, harassing, duplicative or which requests documents which are already in the possession of the defendants.



Interrogatory 5: Provide the dates when Dr. King allegedly examined and/or treated N.B..

Response to Interrogatory 5: Objection. The information sought in this discovery request is equally available to Dr. King. Additionally, the information being sought is contained within the medical records attached to the relator's initial disclosures, previously provided to the propounding party.

Interrogatory 6: Provide the dates, if any, when Dr. Toby Tyler Watson examined and/or treated N.B..

Response to Interrogatory 6: Dr. Toby Tyler Watson has not examined or treated N.B..

Interrogatory 7: Provide the name(s) and address(es) of the parent(s) or guardian(s) of N.B., if known.

Response to Interrogatory 7:

Mother: Chris Maxwell-Meyer

W6929 S. Cty. Rd. A

Adell, WI 53001

Father: David Bingham

Last Known address: 2414 S. 17th Street

Sheboygan, WI 53081

Interrogatory 8: Provide the date(s), if any, when Dr. Toby Tyler Watson met in person or communicated in any manner with the parent(s) or guardian(s) of N.B..

Response to Interrogatory 8: The relator has communicated with N.B.'s mother on occasion, but has not kept a record of his contact with her. He does recall specifically having contact with N.B.'s mother on April 26, 2010, July 8, 2010, and September 3, 2010. He and N.B.'s mother have conversed in 2011 and 2012, dates unknown.

Interrogatory 9: Identify in chronological order starting dates, all health care providers who examined and/or treated patient N.B. for any physical or mental

health condition in the last 10 years, and provide the mailing address for each provider.

Response to Interrogatory 9: Objection. This interrogatory seeks to discover N.B.'s treatment history that is unrelated and completely irrelevant to the issues in this litigation, and a violation of N.B.'s right to privacy.

Interrogatory 10: Identify by name and last known address all persons, including experts, whom [sic] you believe or know have information regarding the issue of liability of Dr. King as alleged in the relator's complaint.

Response to Interrogatory 10:

- A. Defendants Jennifer King: Addresses known to the defendants.
- B. Christine Maxwell Meyer: W6929 S. County Road A, Adell, WI 53001
- C. Relator Dr. Toby Watson: 2808 Kohler Memorial Drive, Sheboygan, WI 53081
- D. ForwardHealth Member Services: 6404 Bridge Road, Madison, WI 53784

Interrogatory 11: Identify by name and last known address all persons, including experts, whom [sic] you believe or know have information regarding the issue of damages as alleged in the relator's complaint.

Response to Interrogatory 11: ForwardHealth Member Services: 6404 Bridge Road, Madison, WI 53784

Interrogatory 12: Provide the name, address, and telephone number for each entity to who [sic] Dr. King allegedly submitted or indirectly submitted false, fraudulent, and/or irrelevant claims.

Response to Interrogatory 12: ForwardHealth Member Services: 6404 Bridge Road, Madison, WI 53784

Interrogatory 13: Provide the name of the claim management system, if any, that was used to submit claims for the prescription medications described in paragraph 24 of the complaint.

Response to Interrogatory 13: ForwardHealth Member Services: 6404 Bridge Road, Madison, WI 53784

6. Please provide any and all documents, including but not limited to letters or emails, to support your claim that you possess non-publicly disclosed fraudulent or false claims submitted by Dr. King to the federal and state governments.

RESPONSE: Objections. Documents responsive to this request are already in the propounding party's possession, as they have been previously provided in relator's Initial Disclosures.

7. Please provide a copy of all documents that support your claim that Dr. King prescribed medications to N.B. that were not approved by the F.D.A. or not supported by one or more of the compendia listed in the complaint.

RESPONSE: Objections. Documents responsive to this request are already in the propounding party's possession, as they have been previously provided in relator's Initial Disclosures.

8. Please provide a copy of all release(s) for health care information signed by the parent(s) or guardian(s) of N.B..

RESPONSE: Objection. Requests documents that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence in connection with the pending action, and would disclose N.B.'s private medical information.

9. Please provide copies of any statements or reports, written recorded or otherwise memorialized, from or authored by any persons identified in response to any of the interrogatories.

RESPONSE: Objection. Overly broad and vague, and calls for the production of work product.

10. If you have kept a log, diary, notes, emails, or other written memoranda relating in any way to the events complained of in this lawsuit, then please produce a copy of each such document.

RESPONSE: Objection. Any notes, logs, or other written memoranda have been created in anticipation of litigation and are work product.

11. Please provide a copy of N.B.'s Medicaid and/or Medical Assistance and/or

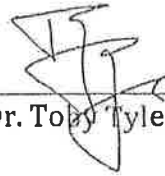
Forward Health card.

RESPONSE: Responsive document is attached. [Bates050]

April 3, 2012

As to Responses:

I hereby declare under penalty of perjury
that the facts stated in these Responses are
true and correct to the best of my
knowledge, information and belief.



Dr. Toby Tyler Watson, Relator

As to objections:



Rebecca L. Gietman (#1052401)
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Attorney for Relator Dr. Toby Watson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
and THE STATE OF WISCONSIN,
ex rel. DR. TOBY TYLER WATSON,

Plaintiffs,

vs.

Case No. 11-CV-236

JENNIFER KING VASSEL, CAPS
CHILD & ADOLESCENT PSYCHOLOGICAL
SERVICES, and ENCOMPASS EFFECTIVE
MENTAL HEALTH SERVICES, INC.,

Defendants.

Deposition of TOBY T. WATSON

Friday, May 4th, 2012

1:39 p.m.

at

GUTGLASS, ERICKSON, BONVILLE & LARSON, S.C.
735 North Water Street
Milwaukee, Wisconsin

Reported by Rosanne E. Pezze, RPR/CRR



1 prescribed medication for Nicholas Bingham or not?

2 A I do not know.

3 Q As you sit here today, do you have any knowledge of
4 any time frames when Nicholas Bingham had stopped
5 seeing Dr. King for whatever reason for any extended
6 periods of time between 19 -- I'm sorry -- 2004 and
7 2009?

8 A I do not -- I don't recall any periods of time
9 whether there are big lapses or anything like that.

10 Q Do you know if he was ever hospitalized anywhere? Do
11 you recall that?

12 A I do not recall that.

13 Q Do you know what medications he was treated on --
14 treated with during any inpatient psychiatric
15 hospitalizations?

16 A I do not.

17 Q I should correct that. Between 2004 and 2008 do you
18 know if there were any gaps in time when he was being
19 treated by someone other than Dr. King for mental
20 health issues?

21 A Go ahead and give me the dates again, please.

22 Q I'm actually -- from 2004 until 2008.

23 A And you're wondering if he was seen by any other
24 physicians between 2004 and 2008?

25 Q Yes, for mental health issues.

1 A Yes.

2 Q Do you know who they were? You're not going to tell
3 me. All right. I'm assuming you're not going to
4 tell me, or you don't think you can tell me?

5 A I don't think I can tell you. But I can tell you
6 that I do know that he was seen by other mental
7 health professionals during that time period.

8 Q What is it that you're referring to to refresh your
9 recollection here in this deposition?

10 A I saw a mental health note from another agency during
11 the time period that you asked that would indicate
12 that he was, in fact, seen or treated.

13 Q But you won't identify that nor disclose the document
14 to me?

15 A Yeah.

16 Q All right. Do you know who Carol Estill is?

17 A The name I just saw on this.

18 Q And that's the person you said you did or didn't know
19 was a pediatrician in Cedarburg?

20 A Correct.

21 Q Do you have any connection with Cedar Mills?

22 A I do not.

23 Q Do you know who Dr. Edwin Montgomery is?

24 A I do not.

25 Q Do you know who Dr. Elizabeth Hagen is?

1 Q And you treat patients who are otherwise enrolled in
2 Medicaid and you don't bill them?

3 A Correct, we just do it for free.

4 Q So not every medical service provided to a Medicaid
5 person requires that somebody bill Medicaid?

6 A Correct.

7 Q And the reason you won't give me copies of the
8 authorizations that you obtained from the mother is
9 it would disclose the identity of healthcare
10 providers?

11 A Say it one more time.

12 Q The reason why, in response to Requests for
13 Production of Document No. 8, I'll be very specific,
14 you declined to provide us with -- with copies of the
15 authorizations signed by the parents or guardians of
16 Nicholas Bingham is that you didn't want to disclose
17 the identity of the other healthcare providers?

18 A I don't think I have the right to release it without
19 her permission saying, hey, you can disclose this
20 information. So, yeah, it's kind of HIPAA, I think,
21 protected.

22 Q And RPD, or Request for Production of Document No. 10
23 asked if you've kept any logs, diaries, notes,
24 e-mails or other written memorandum relating in any
25 way to the events complained of in this lawsuit.