

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Alphonzo Allen,

Plaintiff,

v. Civil No. 06-21 (DWF/AJB)

Guidant Corporation,

Defendant.

Leonard Mayem,

Plaintiff,

v. Civil No. 06-17 (DWF/AJB)

Guidant Corporation,

Defendant.

**ORDER ON
GUIDANT'S FIRST MOTION TO
COMPEL PRODUCTION OF
COMPLETED PLAINTIFF FACT
SHEETS AND EXECUTED MEDICAL
RECORDS**

Adel A. Nadji, Esq., Joseph E. Russell, Esq., and William M. Audet, Esq., Alexander, Hawes & Audet, LLP, and Dario B. deGhetaldi, Esq., George R. Corey, Esq., Corey, Luzaich, Pliska, deGhetaldi & Nastari, LLP, counsel for Plaintiff Alphonzo Allen.

Adel A. Nadji, Esq., Joseph E. Russell, Esq., and William M. Audet, Esq., Alexander, Hawes & Audet, LLP, and Ramon Rossi Lopez, Esq., Lopez, Hodes, Restaino, Milman & Skikos, counsel for Plaintiff Leonard Mayem.

Timothy A. Pratt, Esq., Shook Hardy & Bacon LLP, counsel for Defendant.

Guidant filed its First Motion to Compel Production of Completed Plaintiff Fact Sheets and Executed Medical Records Authorization (Civ. No. 06-17 (DWF/AJB), Doc. No. 3; Civ. No. 06-21 (DWF/AJB), Doc. No. 3; MDL No. 05-1708 (DWF/AJB), Doc. No. 548) (First Motion to Compel) on September 1, 2006. In that motion, Guidant seeks an Order compelling Plaintiffs Allen and Mayem to comply with the Court's previous Orders by providing Guidant with properly executed medical records authorizations and awarding Guidant costs and attorney fees incurred as a result of bringing its First Motion to Compel.

Allen and Mayem filed their individual oppositions to Guidant's motion on September 13, 2006, explaining that they have complied with the Court's Orders by giving Guidant 18 and 19 signed authorizations, respectively.¹ They assert that they have always been willing to provide Guidant with additional provider-specific, signed

¹ Guidant later filed a motion for leave to file a reply brief, and it attached its reply brief to that motion. The Court grants Guidant's Motion for Leave. Then, without seeking permission from the Court, Mayem and Allen filed sur-reply memoranda. Because the Court has considered all documents submitted in connection with Guidant's Motion to Compel, Mayem and Allen's failure to seek leave is moot. Nevertheless, all parties to this MDL action are again reminded that they must comply with the Federal Rules of Civil Procedure, the Local Rules of the District of Minnesota, and all Orders, including PTO No. 16, entered in this MDL.

Mayem and Allen filed affidavits with exhibits attached to demonstrate that they have submitted completed medical authorization forms and PFSs to Guidant. The Court cautions the parties to redact personal data identifiers, such as social security numbers, from any document filed on CM/ECF. *See* E-Government Act of 2002 (Pub. L. 107-347) (requiring, unless otherwise ordered by the Court, parties to use abbreviated social security numbers, names of minors, dates of birth and financial account numbers in documents filed on CM/ECF). Because Mayem's and Allen's social security numbers appeared in their filings, the Court removed certain exhibits from CM/ECF.

authorization forms but that they are not willing to submit blank or generic authorizations. Instead, they explain that, if more authorizations are needed, they will give additional provider-specific authorizations to Guidant as needed. Allen and Mayem object to giving blank authorization forms because Guidant “would have secret access to [their] records without any requirement that [plaintiffs] be notified.” (Allen’s and Mayem’s Sur-Reply at 1.) Finally, they contend that Guidant’s repeated requests for blank authorization forms is sanctionable conduct.

In response, Guidant contends that Allen and Mayem have not complied with the Court’s Orders because they have not submitted non-provider-specific, “fully-executed, court-approved” signed authorizations. Specifically, Guidant asserts that “[p]ursuant to the Court’s PTOs, a properly executed medical records authorization is one that is signed by the plaintiff but is not provider specific.” (Guidant Reply at 1.) Guidant explains that it needs such authorization forms when it learns through discovery of any plaintiff’s additional healthcare providers that were not disclosed on a plaintiff’s fact sheet (PFS). Guidant asserts that it would be unduly burdensome to it and would slow the discovery process down if Guidant were forced to ask for new authorization forms every time an additional healthcare provider is uncovered in discovery. It further asserts that Allen and Mayem would not be prejudiced because Guidant is bound to respect the confidentiality of plaintiffs’ records and because plaintiffs “will be able to obtain from the parties’ medical records service any medical records that [Guidant] obtains using the authorization.” (Guidant Reply at 4.)

It is clear that the dispute here centers on the parties' interpretation of the Court's Orders. On January 6, 2006, the Court entered PTO No. 2, which approved the form for all PFSs.² (MDL No. 05-1708 (DWF/AJB), Doc. No. 11.) At the end of the question section of the PFS form there is a list of document requests, including a request for "authorizations for the release of medical, employment, insurance and disability records *for those entities identified in the above responses.*" (MDL No. 05-1708 (DWF/AJB), Doc. No. 11, Attachment E, as updated, emphasis added.) On May 19, 2006, the Court denied a request to reconsider PTO No. 9, which addressed the selection process for the bellwether cases. The May 19, 2006 Order discusses requirements for the completion of PFSs in certain bellwether cases: "consistent with prior orders of this Court, properly completed [PFSs], along with any medical records and any medical authorizations, must be provided. Plaintiffs may not limit the healthcare providers from whom Defendants can obtain records. Nor may Plaintiffs restrict the periods of time from which records may be maintained." (MDL No. 05-1708 (DWF/AJB), Doc. No. 286.)

Shortly thereafter, the Court entered PTO No. 14, which addressed the imposition of a 10-year time limitation on certain discoverable information. (MDL No. 05-1708 (DWF/AJB), Doc. No. 382.) On September 14, 2006, and pursuant to the parties' stipulation and their proposed language, the Court entered an Order resolving, in part, Guidant's First Motion to Compel as applied to certain plaintiffs. That Order provides

² In an Order dated March 22, 2006 and pursuant to the parties' stipulation, the Court deleted the word "oral" from the approved PFS form. (MDL No. 05-1708 (DWF/AJB), Doc. No. 118.)

that “[c]onsistent with the Court’s May 19, 2006 Order . . . plaintiffs may not limit the healthcare providers from whom defendants can obtain records. In addition, PTO No. 14 . . . shall apply. The authorization must be signed and dated in both of the signature areas contained in the authorization form. The authorization may not limit the type of information obtainable by [Guidant].” (MDL 05-1708 (DWF/AJB), Doc. No. 606). Importantly, Guidant never raised or suggested the use of a blank or generic authorization form before the Court issued any of its Orders.

Taken together, the Court’s Orders do not stand for the proposition that a properly executed medical authorization form is one that is signed by a plaintiff but is not provider specific. Rather, a plaintiff must complete an authorization form, limited only in time as described in PTO No. 14, for each and every provider listed on a plaintiff’s PFS. A plaintiff may not limit the healthcare providers from whom Guidant can obtain records by failing to give a medical authorization form for a specific provider. Finally, as in all cases, under Federal Rule of Civil Procedure 26(e), every plaintiff has a continuing duty to supplement his or her disclosures, including providing additional executed authorization forms, if a plaintiff learns that information disclosed to Guidant is incomplete or incorrect.

This clarification about the Court’s Orders applies to all plaintiffs. The PSC and Guidant informed the Court at the September 21, 2006, status conference that they are discussing amendments and procedures related to the PFS. The Court is confident that such discussions will resolve future disputes concerning the PFS and the 10-year

limitation and that all parties will act reasonably and with common sense with respect to the requirements of the PFS and medical authorization forms.

Based on the foregoing, the Court reviewed Allen's and Mayem's medical authorization forms and finds that these two plaintiffs have complied with the Court's Orders.

Therefore, the reasons state above, **IT IS HEREBY ORDERED:**

1. Guidant's First Motion to Compel Production of Completed Plaintiff Fact Sheets and Executed Medical Records Authorization (Civ. No. 06-17 (DWF/AJB), Doc. No. 3; Civ. No. 06-21 (DWF/AJB), Doc. No. 3; MDL No. 05-1708 (DWF/AJB), Doc. No. 548) is **DENIED** insofar as it relates to Plaintiffs Allen and Mayem.

2. Guidant's Motions to File a Reply to Plaintiff's Opposition to Guidant's First Motion to Compel (Civ. No. 06-17 (DWF/AJB), Doc. No. 11; Civ. No. 06-21 (DWF/AJB), Doc. No. 11; MDL No. 05-1708 (DWF/AJB), Doc. Nos. 616 and 618) is **GRANTED**.

Dated: September 22, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court