

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Owens v. Fluz Fluz LLC, a Delaware limited liability company

Owens v. Fluz Fluz LLC, No. 24-cv-01083-MMC (TSH) (N.D. Cal. Mar. 21, 2025) · No. 24-cv-01083-MMC (TSH) · Decided March 21, 2025

SUMMARY

The United States District Court for the Northern District of California addresses a discovery dispute concerning redactions to Plaintiff’s medical records. Applying California privilege law, the Court holds that Plaintiff waived the physician-patient and psychotherapist-patient privileges only as to Lyme disease, Epstein-Barr virus, post-concussive syndrome, physical pain resulting from those conditions, and emotional distress. The Court permits redaction of unrelated medical information and orders the parties to submit a further joint discovery letter brief and records for in camera review.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Thomas S. Hixson
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 21, 2025
DOCKET	24-cv-01083-MMC (TSH)
DISPOSITION	other
PROCEDURAL POSTURE	Discovery order resolving a dispute over redactions to Plaintiff's medical records and the scope of claimed physician-patient and psychotherapist-patient privilege waivers.
STANDARD OF REVIEW	The court applied California privilege law under Federal Rule of Evidence 501 and determined the scope of waiver based on the conditions placed at issue by the pleadings.
PRECEDENTIAL VALUE	Unpublished federal district court discovery order; persuasive rather than precedential value.

TOPICS

- discovery dispute
- privilege
- medical records privacy
- health law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff waived the physician-patient and psychotherapist-patient privileges by placing particular medical conditions and emotional and physical injuries at issue in the lawsuit.
2. Whether privilege waiver extends to unrelated medical conditions merely because they were addressed during the same medical appointment as a condition placed at issue.
3. Whether Plaintiff's authorization for medical providers to release records to his attorney waived privilege as to Defendant.
4. Whether Defendant was entitled to sanctions under Federal Rule of Civil Procedure 37.

HOLDINGS

1. By placing Lyme disease, Epstein-Barr virus, post-concussive syndrome, physical pain resulting from those conditions, and emotional distress at issue, Plaintiff waived the physician-patient and psychotherapist-patient privileges as to information concerning those conditions and injuries, but not as to unrelated medical conditions.
2. When a medical appointment concerns both a condition placed at issue and a condition not placed at issue, waiver attaches only to the portions of the record concerning the condition at issue, and the remaining portions may be redacted.
3. Plaintiff's authorization allowing medical providers to provide records to his attorney did not waive privilege as to Defendant.
4. Defendant was not entitled to sanctions under Federal Rule of Civil Procedure 37 because it had not yet obtained relief.

KEY QUOTATIONS

"Disclosure cannot be compelled with respect to other aspects of the patient-litigant's personality even though they may, in some sense, be 'relevant' to the substantive issues of litigation." (at 2)

"The patient thus is not obligated to sacrifice all privacy to seek redress for a specific mental or emotional injury; the scope of the inquiry permitted depends upon the nature of the injuries which the patient-litigant himself has brought before the court." (at 2)

"But the patient litigation exception does not expand by mission creep to include conditions the patient did not put at issue in filing the lawsuit, merely because they are also addressed in the same appointment." (at 3)

FACTUAL BACKGROUND

Plaintiff sought damages and alleged that Lyme disease, Epstein-Barr virus, and post-concussive syndrome caused periodic flare-ups affecting information processing and response formulation. He also sought damages for emotional distress and physical and mental pain and anguish. Plaintiff's counsel redacted portions of medical

records, and the parties disputed whether the lawsuit waived privilege as to all medical records or only records concerning the conditions and injuries placed at issue.

PROCEDURAL HISTORY

In this diversity action, the parties submitted a joint discovery letter concerning Plaintiff's redactions of medical records. The court held a hearing on March 21, 2025, clarified the scope of the claimed privilege waiver, and ordered the parties to submit a further joint discovery letter, declarations, and records for in camera review before the court would rule on specific redactions.

DISPOSITION

other

CASES CITED

- In re Lifschutz, 2 Cal. 3d 415, 435-36 (1970)
- City & County of San Francisco v. Superior Court, 37 Cal. 2d 227, 232 (1951)
- Britt v. Superior Court, 20 Cal. 3d 844, 849, 862-64 (1978)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT OF CALIFORNIA 9 10 RYAN OWENS, Case No. 24-cv-01083-MMC (TSH) 11 Plaintiff, DISCOVERY ORDER 12 v. Re: Dkt. No. 23 13 FLUZ FLUZ LLC, 14 Defendant. 15 16 The parties have a dispute concerning redactions Plaintiff’s counsel has made to the 17 Plaintiff’s medical records.

The parties have agreed on a time frame for the relevant medical 18 records, which is August 2021 to the present. The parties also agree that in this diversity action, 19 California state law governs matters of privilege. See Fed. R. Evid. 501.

The principle dispute is 20 over the application of the physician-patient privilege and the psychotherapist-patient privilege. 21 See Cal. Evid. Code §§ 990-1027. In the joint discovery letter brief, Defendant seemed to argue 22 that all of the medical records Plaintiff has produced should be unredacted because he waived any 23 privilege when he put his physical and emotional condition at issue by filing this lawsuit.

Plaintiff 24 disagreed and contended the waiver is limited to Lyme disease, Epstein-Barr virus and post- 25 concussive syndrome (the conditions for which he requested a reasonable accommodation), as 26 well as emotional distress, as he seeks damages for that.

The Court held a hearing on March 21, 27 2025, and now issues this order. 1 to the physician-patient privilege and the psychotherapist-patient privilege, stating that “[t]here is 2 no privilege

under this article as to a communication relevant to an issue concerning the condition 3 of the patient if such issue has been tendered by... [t]he patient.” With respect to section 1016, 4 the California Supreme Court has held that “disclosure can be compelled only with respect to 5 those mental conditions the patient-litigant has ‘disclosed... by bringing an action in which they 6 are in issue’; communications which are not directly relevant to those specific conditions do not 7 fall within the terms of section 1016’s exception and therefore remain privileged.” In re 8 Lifeschutz, 2 Cal. 3d 415, 435 (1970) (quoting City & County of San Francisco v. Superior Court, 9 37 Cal. 2d 227, 232 (1951)) (emphasis original). “Disclosure cannot be compelled with respect to 10 other aspects of the patient-litigant’s personality even though they may, in some sense, be 11 ‘relevant’ to the substantive issues of litigation.

The patient thus is not obligated to sacrifice all 12 privacy to seek redress for a specific mental or emotional injury; the scope of the inquiry permitted 13 depends upon the nature of the injuries which the patient-litigant himself has brought before the 14 court.” Id. 15 The court went on to explain that “[i]n some situations, the patient’s pleadings may clearly 16 demonstrate that his entire mental condition is being placed in issue and that records of past 17 psychotherapy will clearly be relevant.” Id. “In other cases, however, the determination of the 18 specific ‘mental condition’ in issue may present more complex problems.” Id. at 436.

In Britt v. 19 Superior Court, 20 Cal. 3d 844, 862-64 (1978), the California Supreme Court held that the same analysis applies to section 996. See also id. at 849 (“[A]lthough in seeking recovery for physical 20 and mental injuries plaintiffs have unquestionably waived their physician-patient and 21 psychotherapist-patient privileges as to all information concerning the medical conditions which 22 they have put in issue, past cases make clear that such waiver extends only to information relating 23 to the medical conditions in question, and does not automatically open all of a plaintiff’s past 24 medical history to scrutiny.”) (emphasis original).

25 Applying these precedents, it is clear that Plaintiff has put at issue Lyme disease, Epstein- 26 Barr virus, and post-concussive syndrome. He alleges in paragraph 14 of the Complaint that these 27 1 discriminatory reasons, i.e., for having these conditions. Paragraph 14 alleges that “[t]hese 2 conditions lead to periodic flare-ups, during which he experiences challenges in processing oral 3 feedback and required additional time for information processing and response formulation.” 4 Thus, as alleged, these appear to be mental conditions.

5 Plaintiff also agrees that emotional distress is at issue because he seeks emotional distress 6 damages. While the Court agrees with that, the Court thinks that is a little bit too narrow. In 7 paragraphs 30, 40, 49, 58 and 67 of the Complaint, Plaintiff seeks damages for “emotional 8 distress” and also for “physical and mental pain and anguish.” While “mental pain and anguish” 9 might not add anything to “emotional distress,” “physical... pain” seems like it does.

Physical pain is also pretty distinct from the other claimed conditions, which relate to the Plaintiff's mental state. At the hearing, Plaintiff's counsel agreed that physical pain resulting from Lyme disease, Epstein-Barr virus and post-concussive syndrome is at issue. But she explained that physical pain resulting from a sprained ankle, for example, is not.

Fair enough. Accordingly, based on the Complaint, the Court thinks Plaintiff has put at issue Lyme disease, Epstein-Barr virus, post-concussive syndrome, physical pain resulting from those conditions, and emotional distress.

The physician-patient privilege and psychotherapist-patient privilege are therefore waived as to those conditions. Plaintiff may not redact medical records as to those conditions, but may redact medical records that do not relate to those conditions. The March hearing was useful in clarifying Defendant's position. From the joint discovery letter brief, it appeared that Defendant was arguing that Plaintiff has put his "physical and mental health" at issue by filing this lawsuit.

Physical and mental health seem to encompass absolutely everything about anyone's medical records, and a waiver of that scope is inconsistent with California Supreme Court precedent. But at the hearing Defendant's counsel clarified that the disputes between the parties are somewhat different from that. According to Defendant's counsel, the issue is that when the Plaintiff saw a particular doctor, the visit sometimes related to a condition at issue (e.g., Lyme disease) and a condition not at issue.

Defendant's counsel argued, first, that in this situation the entire medical record for that visit should be produced unredacted condition at issue. Defendant's counsel also argued, second, that even assuming that for a multiple-purpose medical appointment the portions of the record that do not relate to a condition at issue may be redacted, the redactions here were excessive.

Plaintiff's counsel disagreed on both points. As to the first point, the Court's view is that if a medical appointment is for both a condition at issue and a condition not at issue, waiver attaches to the portions of the record for that appointment that concern the condition at issue, and the remainder may be redacted. If a patient has multiple medical conditions, it would not be unusual for a medical appointment to address more than one of them.

But the patient litigation exception does not expand by mission creep to include conditions the patient did not put at issue in filing the lawsuit, merely because they are also addressed in the same appointment. See *In re Lifeschutz*, 2 Cal. 3d at 435 ("communications which are not directly relevant to those specific conditions do not fall within the terms of section 1016's exception and therefore remain privileged") (emphasis added); *Britt*, 20 Cal. 3d at 849 ("waiver extends only to information relating to the medical conditions in question") (emphasis original).

16 Now let's turn to the second point. Determining which portions of a medical record for a 17 single appointment relate to the conditions at issue may not always be simple or easy, and it is 18 unsurprising that the two sides might disagree. If the issue were merely one of relevance, the best 19 approach might be to produce the documents unredacted, and the parties could fight it out on summary judgment or at trial which portions of the records relate to what.

However, the issue 20 here is privilege, and if information is privileged, Plaintiff does not have to disclose it, and 21 Defendant is not entitled to see it. 22 Accordingly, as discussed at the March 21 hearing, the Court ORDERS the parties to file a 23 joint discovery letter brief by April 4, 2025, concerning the redactions Plaintiff has made, together 24 with a declaration from each side and the redacted medical records, and for Plaintiff to submit 25 hard copies by that date of the unredacted records for the Court's in camera review.

The Court 26 27 1 will then rule on the redactions.! 2 IT IS SO ORDERED. 3 4 Dated: March 21, 2025 5 TAA. | THOMAS S. HIXSON 6 United States Magistrate Judge 4 8 9 10 11 12 13 15 16 17 Z 18 19 20 21 22 23 ' Defendant also argues that Plaintiff waived privilege when he signed a letter authorizing his 24 || medical providers to provide his records to his attorney.

However, that argument is illogical. That waiver was merely to authorize the provider to provide the records to his attorney; it was not a 25 waiver as to his litigation opponent. The parties also discuss the right to privacy under California law.

However, neither side contends, or cites any legal authority to show, that medical records 26 || that are discoverable under sections 996 and 1016 would somehow nonetheless be protected by the right to privacy, so it does not seem that the right to privacy requires a separate analysis.

The 97 || Parties also discuss whether the unredacted medical records are relevant and proportional under Rule 26, but since state law controls on the issue of privilege, state law is what matters for this 2g || dispute. Defendant also seeks sanctions under Rule 37, but since it has not yet obtained any relief, it doesn't get any sanctions.