

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KELLY A. SHURE,

Plaintiff,

v.

GS ROCKLEDGE, LLC, GREP
SOUTHEAST, LLC,

Defendants.

CIVIL ACTION FILE NO.:
1:16-CV-00650-RWS

MOTION TO COMPEL PRODUCTION OF DOCUMENTS
FROM SPINE CENTER OF ATLANTA / DR. JAMES
CHAPPUIS AND FOR ATTORNEY FEES

COME NOW Defendants and, pursuant to FRCP 34 and 37(a), file the following Motion to Compel Production of Documents from Dr. James Chappuis (as well as his practice group Spine Center Atlanta and its affiliates). Defendants further move for reimbursement of their reasonable and necessary attorney fees, and show the Court as follows:

BACKGROUND

Plaintiff Kelly Shure has received medical treatment from Dr. James Chappuis through his practice group, Spine Center Atlanta, allegedly arising out an incident which occurred on January 28, 2014 on Defendants' property. Defendants

originally served a subpoena upon Dr. Chappuis and his practice group on May 6, 2016. (Exhibit “A”). At that time, Dr. Chappuis and Spine Center Atlanta partially complied with Defendants’ requests, producing some medical records, billing records, and lien information, including original x-ray films, but failed to produce any records prior to May 26, 2015.

Subsequently, Plaintiff continued to treat with Spine Center Atlanta. In February 2017, Spine Center Atlanta staffers reached out to undersigned counsel’s office, explaining that they had inadvertently provided their only copies of Plaintiff’s x-ray films in response to Defendants’ first document requests. Plaintiff had been scheduled for additional procedures at that time, and thus Spine Center Atlanta asked for the films to be returned. Undersigned counsel (of course) complied, but secured a promise that copies of the films would be provided to undersigned counsel, so that they could be retained for anticipated expert review. No such copies have ever been provided.

Although Defendants’ original subpoena (served May 6, 2016 and attached hereto as Exhibit “A”) was continuing in nature, on April 19, 2017, Defendants served a second subpoena (attached hereto as Exhibit “B”), requesting updated records and following up on the missing films. Over the course of the next several months, staffers with undersigned counsel’s office contacted Spine Center Atlanta

on numerous occasions, seeking production of both the requested updated records, and also of copies of the x-ray films which undersigned counsel had returned at Spine Center Atlanta's request.

On August 16, 2017, undersigned counsel contacted Ms. Moody and Ms. Fulford, identified as records custodians with Spine Center Atlanta, via telephone. Subsequent to that phone call, undersigned counsel generated the email attached as Exhibit "C".

On August 22, 2017, undersigned counsel received a call from Richard Merritt, who identified himself as staff counsel for Spine Center Atlanta. Mr. Merritt assured undersigned counsel that the requested records would be provided. Immediately thereafter, undersigned counsel generated the email attached as Exhibit "D", thanking Mr. Merritt for his attention to Defendants' subpoena, specifying the deficiencies in Spine Center Atlanta's document production to date and providing until Friday, August 25, 2017 for Spine Center Atlanta to advise of a date certain on which the records would be produced. On August 29, 2017, Mr. Merritt emailed undersigned counsel (missing the Friday deadline by four days), advising in the email attached as Exhibit "E" that the records would be produced by September 1, 2017. Undersigned counsel assented to this self-prescribed deadline.

By September 1, 2017, no records had, in fact, been produced. Undersigned counsel reached out to counsel for Spine Center Atlanta once again, sending the email attached as Exhibit “F,” but did not receive a response.

The specific records which Defendants have repeatedly sought from Spine Center Atlanta are as follows:

1. All documents created by Spine Center Atlanta or its affiliates pertaining to patient Kelly Shure prior to May 26, 2015 (including intake and referral forms, correspondence with the patient or the referring attorney, any website forms filled in by the patient, etc.); and
2. Digital radiology scans which can be opened and viewed by a radiologist for the calendar years 2015 and 2016, including copies of all scans which Defendants produced back to Spine Center Atlanta at their request. (Spine Center Atlanta has provided scans from 2017 only, to date).

ARGUMENT AND CITATION OF AUTHORITY

Generally speaking, a party has the right to recover documents from a non-party on the same basis as it may recover documents from a party. *See, e.g., Hopson v. Kennestone Hosp., Inc.*, 241 Ga. App. 829, 830, 526 S.E.2d 622, 624 (1999). In the instant case, Spine Center Atlanta has never raised any objection to production of the records Defendants seek (nor has Plaintiff herself). Instead, Spine

Center Atlanta has been notably and indeed willfully inattentive to Defendant's subpoena duces tecum.

Rule 45(c)(1) requires that the party issuing a subpoena "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena."

Se. Mech. Servs., Inc. v. Brody, No. CIV.A.1:09CV0086GETS, 2009 WL 3095642, at *2 (N.D. Ga. June 22, 2009), report and recommendation adopted as modified, No. CIV.A.1:09CV0086GET, 2009 WL 3095196 (N.D. Ga. Sept. 24, 2009). Defendants have consistently complied with this duty by attempting to work with Spine Center Atlanta on complete production, but have been stonewalled.

Defendants are clearly entitled to medical records from a plaintiff's treating hospitals and doctors, especially where no claims of privilege have been raised. "[A] party may request that a nonparty hospital produce patient records which are not privileged." Hopson v. Kennestone Hosp., Inc., 241 Ga. App. 829, 830, 526 S.E.2d 622, 624 (1999).

Here, Defendants have gone out of their way to be reasonable, providing Dr. Chappuis and Spine Center Atlanta with numerous extensions, polite follow-up phone calls and emails, and even an unnecessary second subpoena. Defendants even produced part of Dr. Chappuis's file back to the clinic when it became clear

Plaintiff's treatment required it. In return, Defendants have repeatedly been ignored.

Under Rule 37 (a), this court has the power to impose an appropriate sanction, including attorney fees, upon a non-compliant recipient of a subpoena duces tecum, "whose conduct necessitated the motion". Defendants have incurred a substantial amount of legal fees in their effort to resolve this dispute in good faith, doing everything possible to avoid having to file the instant motion. Those efforts have been in vain, and thus Defendants are entitled to be reimbursed for their expenses in an amount shown by the affidavit of undersigned counsel, attached as Exhibit "G."

CONCLUSION

For the foregoing reasons, this Court should enter an order requiring Dr. James Chappuis, Spine Center Atlanta, and its affiliates to fully and completely comply with Defendants' document requests, and should also order Spine Center Atlanta to reimburse Defendants in an amount consistent with the figures shown in Exhibit "G."

This 1st day of September, 2017.

Respectfully submitted,

McMICKLE, KUREY & BRANCH, LLP

BY: /s/ Zach M. Matthews

ZACH M. MATTHEWS

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NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KELLY S. SHURE,

Plaintiff,

v.

GS ROCKLEDGE, LLC, GREP
SOUTHEAST, LLC, GREYSTAR
ASSOCIATES IV, LLC, GREYSTAR
DEVELOPMENT AND
CONSTRUCTION, L.P., GREYSTAR
EQUITY PARTNERS IV, LLC,
GREYSTAR GP II, LLC, GREYSTAR
HOLDINGS, INC., GREYSTAR
MANAGEMENT SERVICES, L.P.,
GREYSTAR RS SE, LLC, CRP-GREP
AVENTINE, L.P., CRP-GREP ELAN
144 OWNER, LLC, GREP GENERAL
PARTNER, LLC, GREYSTAR REAL
ESTATE PARTNERS GP, LLC,
GREYSTAR REAL ESTATE
PARTNERS, LLC,

CIVIL ACTION

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing
MOTION TO COMPEL AND FOR ATTORNEY FEES by depositing same in

the United States Mail in a properly-addressed envelope with adequate postage thereon to:

T. Charles Blaska, Esq.
Dana J. Norman, Esq.
Thomas C. Blaska, Esq.
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SPINE CENTER ATLANTA
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*Attorney for Dr. James Chappuis
and Spine Center Atlanta*

This 1st day of September, 2017.

By: /s/ Zach M. Matthews
ZACH M. MATTHEWS
For the Firm