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6 In Propria Persona Plaintiff

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA

9 Brian A. Wilkins,  
10 Plaintiff,  
11 vs.  
12 Maricopa County; Joseph M. Arpaio, in  
13 his individual and official capacity as  
14 Maricopa County Sheriff; Darren Dauch, in  
his individual and official capacity;  
Defendants.

) CV: 09-01380-PHX-LOA

) **RESPONSIVE SUPPLEMENTAL  
MEMORANDUM OF LAW TO  
MARICOPA COUNTY'S  
SUPPLEMENTAL MEMORANDUM**

15  
16 Plaintiff hereby responds to Defendant Maricopa County's Supplemental  
17 Memorandum of Law (Doc. # 114). Said Memorandum is a series of contradictions and  
18 false, irrelevant statements by Defendant Maricopa County, which provides no legal  
19 authority which the Court ordered the Defendants provide, that it is entitled to discover  
20 the Plaintiff's medical records beyond what has already been authorized. Because  
21 Defendant Maricopa County provides no legal authority for its desire to discover  
22 Plaintiff's entire medical history, their Motion to Compel should be summarily denied.

23  
24 **Maricopa County Still Provides No Legal Authority To Discover Medical Records**  
25 **Beyond What Has Already Been Authorized**

26 Sections 1 and 2 of Defendant Maricopa County's Supplemental Brief only cites  
27 Arizona laws which reinforce the Plaintiff's position. These sections are basically asking  
28 the Court to order the Plaintiff's medical providers to disclose any and all records

1 Maricopa County seeks, without any legal authority which supports this position.  
2 Maricopa County states the obvious, when it says it is not a "covered entity" pursuant to  
3 HIPAA regulations. Banner, Walgreens, Dr. Patchen, ASU, and Medco are the "covered  
4 entities" which cannot disclose any records beyond what is pertinent to this case.  
5 Maricopa County complains about wanting Medco records as well. Dr. Patchen wrote  
6 the **ONE** prescription to Medco, in January 2008, and Defendants have been given  
7 authorization to pertinent records from Dr. Patchen. However, since Plaintiff assumes  
8 Maricopa County will beat this issue to death as well, attached is an exhibit which  
9 authorizes Medco to disclose prescription history for Plaintiff's blood pressure  
10 medication, which was served on Defendants on this same day. Exhibit A.

11  
12 **Plaintiff Has Put His Hypertension and Broken Hand at Issue.**

13 Maricopa County claims in this section that, "Plaintiff has put his medical  
14 condition at issue and must therefore provide Defendant with access to his medical  
15 history." Defendant Maricopa County cites a special action case, which the Arizona  
16 Supreme Court reversed a Maricopa County judge's order for overstepping his authority  
17 by ordering production of non-pertinent medical records. *Bain v. Superior Court In and*  
18 *For Maricopa County*, 148 Ariz. 331, 334, 714 P.2d 824, 827 (1986). The Plaintiff in the  
19 instant case has waived physician-client privilege on two issues: blood pressure  
20 medication and a broken hand. "The law of Arizona relating to waiver of the physician-  
21 patient privilege is two-fold: where a privilege holder (1) offers himself as a witness and  
22 voluntarily testifies with reference to privileged communications concerning the  
23 condition, § 12-2236; or (2) places a particular medical condition at issue by means of a  
24 claim or affirmative defense...then the privilege will be deemed waived with respect to  
25 that particular medical condition." See *Bain* at 334. In the instant case, the Plaintiff has  
26 voluntarily placed two medical conditions - hypertension treated by the drug Benicar "for  
27 the previous five years" (see Second Amended Complaint) and a broken hand - at issue  
28 in this case. Once again, as the Plaintiff has continually and repeatedly had to bring to

1 the Court's attention, Plaintiff has authorized disclosure of five years of blood pressure  
2 medication prescription records (including authorization for disclosure from the doctor  
3 who prescribed the medication) and to Banner Hospital and ASU Medical, regarding his  
4 acute broken hand injury. Maricopa County seemingly wants the Court to just order the  
5 Plaintiff authorize whatever records Maricopa County wants because it says so, whether  
6 the records are pertinent to this case or not, and without any legal authority supporting  
7 its position. However, since Maricopa County cites *Bain*, and knows that the Arizona  
8 Supreme Court reversed the trial court judge's order that Ms. Bain produce non-  
9 pertinent medical records, Defendants obviously know what the laws are, yet continue  
10 this crusade.

11  
12 **Maricopa County claims it is not seeking 35 years of medical history.**

13 Plaintiff will not address this again. Please refer to Doc. #106, page 2.

14  
15 **Maricopa County claims, "Additional medical records may be identified and will  
16 require court orders for production."**

17  
18 Maricopa County contradicts itself here, when it says, "Plaintiff has provided preliminary  
19 (i.e., unsigned and unverified) answers to the County's interrogatories." See Doc. #114  
20 at page 5). Yet in Defendant Maricopa County's response to the Plaintiff Motion for  
21 Sanction, it claims the Plaintiff, "has neither answered nor objected to a single one of  
22 the interrogatories." See Doc. #103, page 5. These vexatious litigation tactics further  
23 reinforce why Maricopa County should be sanctioned. It is not clear, but Plaintiff  
24 believes Maricopa County is asking the Court to do some sort of unprecedented  
25 exception for them when it says the Court should, "ratify a procedure..." which will  
26 require the Plaintiff to disclose whatever the Defendants want, whether legal or not  
27 (Doc. #114, page 5). Because this tactic is not supported by any legal authority, Plaintiff  
28 will not respond.

1 **CONCLUSION**

2 Defendant Maricopa County has not provided any “legal authority that it is  
3 entitled to discover all Plaintiff’s medical records,” as the Court ordered it to do. Doc.  
4 #109. If anything, Defendants have only provided authority which backs the Plaintiff’s  
5 position. Therefore, Defendant Maricopa County’s Motion to Compel, after the Court  
6 considers the original Response to Defendant’s Motion To Compel (Doc. #100) and the  
7 instant brief, should be summarily denied and further, Plaintiff requests the Court  
8 consider the subsequent Motion for Sanctions against Defendant Maricopa County  
9 (Doc. #101).

10 Respectfully submitted on this 14th day of May, 2010.

11 /s/ \_\_\_\_\_  
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18 **CERTIFICATE OF FILING AND SERVICE**

19 I hereby certify that on May 14, 2010, I electronically transmitted the  
20 foregoing document to the Clerk’s Office using the CM/ECF System for  
21 filing, and thus electronically served the attorneys for Defendants, at the following  
22 addresses:

23 Sherle Rubin Flaggman  
24 Office of General Litigation Services  
25 301 W Jefferson St Ste 3200  
26 Phoenix, AZ 85003  
27 Email: [Flaggmans@mail.maricopa.gov](mailto:Flaggmans@mail.maricopa.gov)

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1 Email: [whites002@mail.maricopa.gov](mailto:whites002@mail.maricopa.gov)

2 I further certify that one (1) copy of the foregoing document was mailed on May

3 15, 2010 to:

4  
5 Honorable Lawrence O. Anderson  
6 United States District Court  
7 Sandra Day O'Connor U.S. Courthouse  
8 401 West Washington Street, Ste. 322, SPC 11  
9 Phoenix, AZ 85003

10 /s/ \_\_\_\_\_  
11 Brian A. Wilkins