

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

YVONNE S. BLACKMOND)	
)	
Plaintiff,)	
)	
vs.)	No. 02-2890 MaV
)	
UT MEDICAL GROUP, INC.,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL DISCOVERY

Before the court is the Rule 37 motion of the defendant, UT Medical Group, Inc., filed August 25, 2003, requesting the court to compel the plaintiff, Yvonne S. Blackmond, to: (1) serve Rule 26(a)(1) initial disclosures, (2) respond to UT's interrogatories and requests for production, (3) execute an employment records authorization form and a medical records authorization form, and (4) appear for her deposition. The motion was referred to the United States Magistrate Judge for determination. For the reasons set forth below, UT's motion is granted.

Blackmond filed a pro se complaint alleging a violation of Title VII of the Civil Rights Act of 1964 on November 20, 2002. On May 6, 2003, the court denied UT's motion to waive the requirements of Rule 26(a)(1) of the Federal Rules of Civil Procedure and ordered the parties to comply with the initial disclosure requirements of Rule 26(a)(1). In compliance with the order, UT served its initial disclosures on Blackmond. As of August 25, 2003, Blackmond had not provided UT with her disclosures required by Rule 26(a)(1).

On July 7, 2003 UT served its first set of interrogatories, its first request for production of documents, and a notice of deposition on Blackmond. In response, Blackmond served on UT and filed with the court "notices" to postpone all of the above, stating she would comply when a more "suitable date" was appropriate, without explanation of what date would be suitable. "Notices" declining to sign an authorization of health information and declining to sign an employment records release, both without explanation, were also filed and served. Because the "notices" did not comply with the Federal Rules of Civil Procedure, the court ordered them stricken from the docket as irregular documents.

UT then attempted to call Blackmond to obtain the discovery responses. After leaving an answering machine message for Blackmond on August 5, 2003, UT mailed Blackmond a letter on the same day requesting Blackmond to contact UT's counsel to discuss the "notices" declining to provide discovery. Blackmond responded by letter, dated August 8, 2003, stating she intended to respond to discovery and appear for a deposition at a mutually agreed upon time, yet failed to indicate when that time would be.

Pursuant to Federal Rules of Civil Procedure 33 and 34, the party upon whom interrogatories and requests for production of documents are served shall serve written responses or objections within thirty days after service of the requests. FED. R. CIV. P. 33, 34. Blackmond failed to properly respond or object to the interrogatories and production requests within the thirty day time period. "[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived." *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989). Pro se litigants, like any other litigants, must comply with the Federal Rules of Civil Procedure. *Feinstein v. Moses*, 951 F.2d 16, 20 (1st Cir. 1991).

Blackmond did not comply with UT's request for an authorization of health information and an employment records release and she failed to properly object to the request pursuant to Rule 34, which requires that reasons for the objections be stated. FED. R. CIV. P. 34(b). Rule 34(a) allows a party to request documents that are in the possession, custody, or control of the party being served. Plaintiff has control over her medical and employment records because "by either granting or withholding [her] consent, [she] may determine who shall have access to them." *Lischka v. Tidewater Servs., Inc.*, Civ. A. No. 96-296, 1997 WL 27066 at *2 (E.D. La. Jan. 22, 1997), (quoting *Smith v. Maryland Cas. Co.*, 42 F.R.D. 587, 589 (E.D. La. 1967)). However, the request for plaintiff's authorization of health information must comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Pub.L. 104-191, Title I, Aug. 21, 1996, 110 Stat. 1978.

Based on the foregoing, UT's motion is granted. Blackmond, shall (1) file and serve initial disclosures within eleven days of the date of service of this order, (2) answer UT's interrogatories and respond to UT's requests for production of documents within thirty days of the date of service of this order, (3) appear for a deposition within forty-five days of the date of service of this order at a time, date, and location to be noticed by UT, (4) immediately execute an employment records release and provide it to UT, and (5) immediately execute a medical records form and provide it to UT as long as it complies with HIPAA.

Blackmond is warned that any additional failure to appear for deposition and to give testimony and/or failure to comply with other discovery requests and other orders of this court will lead to dismissal of her lawsuit.

IT IS SO ORDERED this 17th day of September, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

