

August 10, 2018

Via E-mail

The Honorable Michael P. Shea  
Abraham Ribicoff Federal Building  
United States Courthouse  
450 Main Street – Room 217  
Hartford, Connecticut 06103

Re: USA ex rel Fabula v. AMR, Conn., CV 12-CV-921-MPS

Dear Judge Shea:

Pursuant to the Court's Instructions for Discovery Disputes and the August 6, 2018 conference with Mr. Self, American Medical Response of Connecticut, Inc. ("AMR") responds to Relator-Plaintiff's disputes concerning the scope of Phase I discovery. The September 19, 2017 Scheduling Order limits Phase I discovery to "(1) the specific claims<sup>1</sup> and ambulance runs identified in the operative Complaint; (2) Fabula's retaliation claim; and (3) whether Mr. Fabula is judicially estopped from recovering on the False Claims Act." (Dkt. 102.) These limitations were jointly proposed to, and adopted by, the Court following the direction of the Second Circuit, which in considering AMR's Fed. R. Civ. P. 9(b) challenge to Relator-Plaintiff Fabula's Third Amended Complaint directed "[w]here a qui tam relator identifies representative examples of false claims or, as here, makes allegations leading to a strong inference that specifies false claims were submitted, *defendants could initially be required to provide discovery only with respect to cases identified in the complaint.*" Second Circuit Opinion at p. 36, n.13 (emphasis added). These limitations were put in place to require that Fabula prove his allegations concerning those transports alleged with specificity in the operative Complaint (the "Subject Transports") before subjecting AMR to even broader, more expensive, and more coercive generalized discovery. Despite this direction and the Scheduling Order's clear terms, Fabula seeks to improperly expand discovery beyond Phase I.

1. Relator is Not Entitled to Additional Information Regarding "Paramedic Assessment" and "Bed-Confined" Designations, Not Related to Subject Transports.<sup>2</sup> AMR has produced all documents regarding the Subject Transports, as well as documents and Interrogatory Responses regarding the "paramedic assessment" and "bed-confined" fields in the "MEDS" software system at issue. Fabula's attempt to obtain broad and burdensome discovery concerning multiple ambulance runs not related to the Subject Transports that may also include these fields should be rejected.

<sup>1</sup> See 31 USC § 3729(b)(2), defining "claim" under the False Claims Act as the actual submission to the Government (as opposed to an allegation of a party).

<sup>2</sup> Relator's Interrogatories 3 and 4, Relator's Requests for Production 11 and 18.

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AMR has produced all of the Patient Care Reports (“PCRs”), including any “addenda” by which any changes were made to PCRs, for those Subject Transports it was able to identify. These documents enable Fabula to determine whether a patient was bed-confined or a paramedic assessment was conducted during a Subject Transport and therefore pursue his Phase I claims. AMR has also produced numerous documents and Interrogatory Responses regarding MEDS, the software program used to generate PCRs, including those fields. Fabula’s assertion that he is entitled to discovery regarding every ambulance run having to do with “paramedic assessment” or “bed-confined” should be rejected.<sup>3</sup>

2. Discovery Is Properly Limited to the New Haven Facility.<sup>4</sup> Fabula worked at AMR’s New Haven facility, the Subject Transports were dispatched from there, the relevant PCRs were submitted there, and the alleged improper instructions to alter PCRs were allegedly given there. AMR has produced documents, including emails, responsive to the subject Requests concerning the New Haven facility. There is no basis to dramatically expand the scope of discovery to the rest of Connecticut, especially at this late date.<sup>5</sup>

3. AMR Has Fully Responded To Relator’s Other Disputed Requests and There is Nothing to Compel. As AMR has informed Relator, it has produced all Disputed responsive documents related to Subject Transports, notwithstanding the burden of attempting to identify them from Fabula’s inaccurate descriptions.<sup>6</sup> AMR has also produced all information in its possession, custody, or control in response to the other Requests regarding which Fabula now seeks to compel additional discovery, or specifically informed Fabula that none exist.<sup>7</sup> There is nothing to compel for these Requests.

Respectfully submitted,



Lawrence M. Kraus

cc: Steven Bloch, Esq. (via email)  
All other counsel of record (via email)

<sup>3</sup> Fabula is similarly not entitled to information regarding *all* claims submitted to the Government in the entire state of Connecticut (*i.e.*, non-Subject Transports). See Plaintiff’s Request for Production No. 17. AMR has produced billing records and information for the Subject Transports.

<sup>4</sup> Relator’s Requests for Production 14 and 15.

<sup>5</sup> AMR has made its position regarding this (and other issues) clear throughout discovery, including in its formal Responses dated April 13, 2018, May 9, 2018, and June 29, 2018 and its written discovery dispute communications dated June 19, 2018 and July 19, 2018.

<sup>6</sup> See Plaintiff’s Interrogatory Nos. 2-4, Plaintiff’s Request for Production Nos. 7-10, 12, 18.

<sup>7</sup> See Plaintiff’s Interrogatory No. 1, 5, Plaintiff’s Request for Production No. 4 and 15.



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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Civil Procedure 37(a)(1) and Local Rule 37(a), the undersigned hereby certifies that Defendant's counsel has conferred with Plaintiff-Relator's counsel regarding the issues raised in this written submission, and the parties have made a good faith effort to eliminate or reduce the area of controversy but were unable to further narrow those issues.

*/s/ Lawrence M. Kraus* \_\_\_\_\_

Lawrence M. Kraus