

**Rosario DLG. KUMAGAI and
Tadao Kumagai**

vs.

**COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS, et al.**

**Civil Action No. 81-0034
District Court NMI**

Decided July 31, 1984

**1. Civil Procedure - Discovery -
Interrogatories**

Although interrogatory may be properly responded to with reference to business or medical records, to satisfy the spirit of the Federal Rules, the reference must specifically identify where in the records the answer can be found. Fed.R.Civ.P. 33 (c).

**2. Civil Procedure - Discovery -
Interrogatories**

Although general language is permitted in the phrasing of an interrogatory, the answering party must be given a reasonably clear indication of the information to be included in the answer. Fed.R.Civ.P. 33 (c).

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IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

ROSARIO DLG. KUMAGAI and TADAO)
KUMAGAI,)
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 Plaintiffs,)
)
 vs.)
)
 COMMONWEALTH OF THE NORTHERN)
 MARIANA ISLANDS, STATE OF)
 HAWAII, UNIVERSITY OF HAWAII)
 SCHOOL OF MEDICINE, and JOSEPH)
 HUMPHREY, M.D.,)
)
 Defendants.)

CIVIL ACTION NO. 81-0034

DECISION RE PLAINTIFFS'
MOTION TO COMPEL DISCOVERY

FILED
Clerk
District Court

JUL 31 1984

For The Northern Mariana Islands
By [Signature]
(Daisy C. [Name])

In this action, plaintiffs seek damages for the wrongful death of their son allegedly caused by the negligence of defendants. Plaintiffs move to compel more complete answers to Plaintiffs' First Set of Interrogatories Nos. 2, 4-8, 12-13, 17, 32 and 37-39. For the reasons stated herein, the Court grants plaintiffs' motion to compel, on the terms and conditions noted, as to Interrogatories Nos. 2, 4-8, 12-13, 17 and 32 and denies the motion as to Nos. 37-39.

[1] Plaintiffs' Interrogatories Nos. 2, 4-7, 12-13, 17 and 32 generally requested the defendants to set forth certain facts relating to the care and treatment of the decedent by the defendants, including the "professional medical relationship"

1 between defendants and the decedent, decedent's medical history,
2 decedent's treatment history and the like. With few exceptions,
3 the defendants answered these interrogatories with the standard
4 response, "see medical records." This Court, in an earlier
5 decision addressing defendants' objections to similar responses
6 made by plaintiffs, stated:

7 Generally, a party may answer
8 an interrogatory by reference to
9 records from which the information
10 could be derived. 8 Wright & A.
11 Miller, Federal Practice and Procedure
12 § 2178 (1970). Rule 33(c) of
13 the Federal Rules of Civil Procedure
14 specifically allows such in
15 the case of business records which
16 are in the possession of the
17 answering party. The Rule does not
18 allow such reference to records,
19 however, if the burden on the party
20 propounding the interrogatories to
21 find the answers would be substan-
22 tially greater than it would be on
23 the answering party. The same
24 principles are applicable here.
25 Plaintiffs have answered that the
26 answers can be found in the decedent's medical records of which defendants have copies. At the hearing on this motion, defendants stated that they were familiar with the records to which plaintiffs referred. It appears that the burden of extracting the requested information would be the same for either party. Therefore, plaintiffs' response is sufficient.

23 Kumagai v. CNMI, et al., Civ. No. 81-0034 (D.N.M.I. (Tr.Div.) May
24 18, 1984)(decision on defendants' motion to compel). Here too,
25 the Court believes that a reference to medical records is suffi-
26 cient. However, to satisfy the spirit of the rules, the refer-

1 ence must be specific. General reference to records, when more
2 specificity can be given, would greatly increase the burden on
3 the propounding party relative to the answering party and would
4 thus be improper. In the facts leading to the decision excerpted
5 above, the defendants stated that they were familiar with the
6 records to which plaintiff referred; accordingly, no further
7 specification was necessary. On this motion, however, plaintiffs
8 have stated that they are not familiar with the specific records
9 to which defendants refer. Therefore, the Court considers it
10 proper that defendants, if they choose to refer to records in
11 lieu of giving a more concise answer, must specifically identify
12 each record in which the answer can be found.

13 Similarly, as to Interrogatory No. 32 which requests
14 defendants to state their theory of the cause of the decedent's
15 death, defendants again refer plaintiffs to "medical records and
16 transcripts of testimony." Such general references are unaccept-
17 able. Defendants must provide a more specific response, whether
18 by a more complete answer or more specific references.

19 [2] The Court feels that an additional comment regarding
20 defendants' answers is appropriate here. The defendants' answers
21 to plaintiffs' interrogatories are not the full and complete
22 answers which help define the contentions of the parties and
23 limit the issues of the case as is intended by the rules.
24 Federal Rules of Civil Procedure 33(a); C. Wright and A. Miller
25 § 2181, p. 576 (1970)(Wright & Miller), quoting McElroy v. United
26 Airlines, Inc., 21 F.R.D. 100, 102 (D.C.Mo. 1957). Rather, the

1 answers are general, cryptic and border on the evasive. It
2 should be noted that such resistance to providing clear and
3 complete answers has also been displayed by plaintiffs,
4 necessitating an earlier motion to compel by the defendants. The
5 Court thinks it necessary at this point to express its
6 dissatisfaction as to the conduct of both counsel for Hawaii and
7 for plaintiffs regarding interrogatories in particular and
8 discovery in general in this case. The Court reminds counsel
9 that it has the authority to limit proof at trial in light of the
10 answers to interrogatories. Wright and Miller § 2181, p.578;
11 see, e.g., Scott v. Fetzer Co. v. Dike, 643 F.2d 670, 673 (9th
12 Cir. 1981) (district court abused its discretion by permitting
13 plaintiff, over objection, to call 20 witnesses, and introduce 26
14 exhibits which were not listed in response to interrogatories).
15 Accordingly, counsel should beware that the Court will carefully
16 scrutinize the proof offered at the trial of this matter and will
17 not hesitate to limit the proof when such was not properly and
18 adequately identified in the answers to interrogatories.

19 Plaintiffs sought in Interrogatory No. 8 the following:

20 Identify any and all, rules
21 and regulations, procedures, staff
22 manuals or any other writing which
23 sets forth the procedures and/or
24 policies which the defendant was
25 operating under on June 16, 1979.

26 If you will do so without a
motion to produce, please attach
copies of each such item to your
answers to these interrogatories.

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If there was an unwritten policy and/or procedure under which physicians employed by defendant University of Hawaii School of Medicine should follow in treating a child at Dr. Torres Hospital, describe said policy and/or procedures in detail.

Defendants objected to the question as vague and ambiguous and refused to answer. While general language is permitted in the phrasing of an interrogatory, the other party must be given a reasonably clear indication of the information to be included in the answer. Wright and Miller § 2168, p.515. The first two paragraphs of the interrogatory at issue suffer from vagueness and overbreadth. Defendants are left with no clear indication as to how their answer might be limited so as not to include a wide range of information relating to the in-state operations of defendants which play no part in this action. The third paragraph is appropriately circumscribed and must be answered by the defendants.

Lastly, defendants object to interrogatories seeking the identity of intended trial witnesses and requesting a list of intended exhibits. Defendants object to these interrogatories as beyond the scope of permissible discovery. Plaintiffs contend that the questions were answered by them when the identical interrogatories were posed by defendants; thus, plaintiffs argue, defendants' actions demonstrate bad faith either in the original drafting of the interrogatories or in the instant refusal to answer. The Court has set a pre-trial conference wherein the

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parties will have to reveal this information at a time sufficiently in advance of trial. Therefore, the contentions of the parties as to this issue are not addressed here.

For the reasons stated, and subject to the limitations herein set forth, plaintiffs' motion is:

1. GRANTED as to Interrogatories 2, 4-8, 12-13, 17 and 32; and
2. DENIED as to Interrogatories 37-39.

DATED this 31ST day of July, 1984.



JUDGE ALFRED LAURETA