

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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In the matter of a Subpoena Issued in the Case of :

NATIONAL ABORTION FEDERATION; MARK I. :
EVANS, M.D.; CAROLYN WESTHOFF, M.D., M.Sc; :
CASSING HAMMOND, M.D.; MARC HELLER, M.D.;; :
TIMOTHY R.B. JOHNSON, M.D.; STEPHEN :
CHASEN, M.D.; GERSON WEISS, M.D., on behalf :
of themselves and their patients, :

Plaintiffs, :

No. 04-70658

- against - :

JOHN ASHCROFT, in his capacity as Attorney :
General of the United States, along with his officers, :
agents, servants, employees, and successors in office, :

Defendant. :
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ORDER

WHEREAS, on January 8, 2004, defendant served a subpoena (the “Subpoena”) on the University of Michigan Health System (the “University of Michigan”), in the action National Abortion Federation, et al. v. Ashcroft, 03 Civ. 8695 (RCC), currently pending in the United States District Court for the Southern District of New York; and

WHEREAS, together with the Subpoena, defendant served the University of Michigan with an order issued by the United States District Court for the Southern District of New York on December 31, 2003, pursuant to 45 C.F.R. § 164.512(e), an implementing regulation for the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), authorizing the University to release the records and information sought in the Subpoena, (copies

of the Subpoena and accompanying order pursuant to 45 C.F.R. § 164.512(e) are attached hereto as Exhibit A); and

WHEREAS, the Subpoena sought production of certain records to be identified by Dr. Timothy R. B. Johnson, a plaintiff in National Abortion Federation, et al. v. Ashcroft, 03 Civ. 8695 (RCC) (“NAF”), in response to discovery requests propounded to him in that case; and

WHEREAS, in seeking production of records to be identified by Dr. Johnson, defendant is not seeking disclosure of the states of residence of any individual who has sought or obtained medical treatment at the University of Michigan; and

WHEREAS, defendant has an urgent need for these documents in order to prepare for trial to commence on March 29, 2004.

IT IS HEREBY ORDERED THAT:

1. Pursuant to 45 C.F.R. § 164.512(e), the University of Michigan shall immediately permit Dr. Timothy R. B. Johnson access to records and information sufficient for Dr. Johnson to identify records responsive to the discovery requests, propounded in NAF, captioned Government’s First Set of Interrogatories and Requests for Documents to Plaintiff Timothy R. B. Johnson, M.D.

2. The University of Michigan shall produce the records and information sought in the Subpoena **no later than March 26, 2004**, subject to the requirements of paragraph 3 below.

3. Before making production pursuant to paragraph 2 above, the University of Michigan (i) shall redact all patient identifying information from the records to be produced,

as defined in the Protective Order entered in the underlying matter, National Abortion Federation v. Ashcroft (dated January 23, 2004) (a copy of that order is attached hereto as Exhibit B) and (ii) may further redact from those records information identifying the states of residence of any individual who has sought or obtained medical treatment from the University of Michigan.

4. The University of Michigan may designate as “Confidential Health Information” any record(s) produced pursuant to this order, or any portion(s) of any record(s) produced, and such designation shall render the designated record(s) subject to the protective order governing disclosure of such information, entered in NAF and dated January 23, 2004, or any other applicable protective order that has been entered in Carhart v. Ashcroft, No. 4:03CV3385 (D. Neb.) (“Carhart”), or Planned Parenthood v. Ashcroft, No. C 034872 (PJH) (N.D. Cal.) (“Planned Parenthood”).

5. Any documents or information produced pursuant to this order shall be used solely for purposes of the prosecution or defense of NAF, Carhart, or Planned Parenthood. and in compliance with the protective orders previously entered in those cases, or that may in the future be entered, in those cases.

SO ORDERED.

Dated: March 12, 2004

/s/
United States District Judge