

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA HEALTH
DISTRICT,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE MICHELLE
LEAVITT, DISTRICT JUDGE,

Respondents,
and

BEATRIZ REGIDOR, INDIVIDUALLY,
AND AMADOR REGIDOR,
INDIVIDUALLY, AND AS HUSBAND
AND WIFE; PACIFICARE OF NEVADA,
INC.; PACIFICARE LIFE AND HEALTH
INSURANCE COMPANY; PACIFICARE
LIFE ASSURANCE COMPANY; AND
UNITED HEALTHCARE INSURANCE
COMPANY,
Real Parties in Interest.

No. 57056

FILED

DEC 14 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order affirming a special master's order authorizing discovery as to petitioner.

Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if such petitions will be considered. Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Petitioner bears the burden of demonstrating that this court's intervention by way of extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As an initial matter, we reject as meritless petitioner Southern Nevada Health District's (SNHD) assertion that the May 19, 2009, temporary stay imposed by this court in another original writ proceeding, Southern Nevada Health District v. District Court, Docket No. 53676, somehow barred real parties in interest from seeking the discovery at issue in this petition. Also without merit are SNHD's arguments that discovery should be prohibited based on real party in interest PacifiCare's alleged participation in the coordinated Endoscopy Center litigation and that PacifiCare is prohibited from seeking to depose certain individuals because the transcripts from previous depositions of these individuals have been sealed.

We now turn to SNHD's assertions regarding its various claimed privileges. In authorizing discovery as to SNHD, the special master held that privacy interests could be protected through "redacting all information identifying individuals that are not litigants in the related Endoscopy cases" and concluded that the official information privilege could be asserted by Brian Labus, Patricia Armour, and Lawrence Sands at their depositions "if those individuals are public officers and the privilege is limited to communications made to those individuals in official confidence." We conclude that these determinations provide sufficient protections and that, absent any argument that SNHD's efforts to avail itself of these remedies have been rejected by the special master and/or district court, SNHD has not demonstrated that our intervention is warranted with regard to SNHD's personal health information and official information privilege arguments. Pan, 120 Nev. at 228, 88 P.3d at 844.

With regard to SNHD's claim to a deliberative process privilege, having considered SNHD's arguments in light of the requirements for claiming that privilege set forth in DR Partners v. Board of County Commissioners, 116 Nev. 616, 6 P.3d 465 (2000), we conclude that SNHD has not met its burden of demonstrating that the discovery authorized by the special master's order is subject to the deliberative process privilege, and therefore, we reject its efforts to bar this discovery on that basis. Id. at 621, 6 P.3d at 468 (noting that the "public official or agency bears the burden of establishing the existence of privilege based upon confidentiality").

As for the investigatory privilege asserted by SNHD, it likewise bears the burden of demonstrating its entitlement to that privilege. Reno Newspapers v. Sheriff, 126 Nev. ___, ___, 234 P.3d 922, 925 (2010) (noting, in a case involving a public records request under NRS 239.010, that the burden is on the government to prove confidentiality). Here, SNHD points to no statute explicitly providing it with this claimed investigatory privilege and, having considered SNHD's arguments to determine whether any private or law enforcement interests for nondisclosure warrant the declaration of confidentiality SNHD seeks, we conclude that SNHD has failed to meet its burden of demonstrating its entitlement to an investigatory privilege with regard to the discovery at issue in this case. Id. at 234, ___, P.3d at 924-28 (rejecting a claim to confidentiality for certain government records related to events following the issuance of a concealed weapons permit, including post-issuance investigative records); Donrey of Nevada v. Bradshaw, 106 Nev. 630, 798 P.2d 144 (1990) (rejecting an assertion of confidentiality and requiring disclosure of a police investigatory report in a case involving a public records request under NRS 239.010). Accordingly, we reject SNHD's

argument that the discovery authorized by the special master is barred by the investigatory privilege.¹

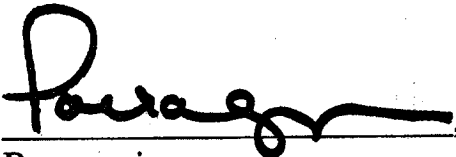
Finally, we turn to SNHD's arguments regarding the preparation of privilege logs and its entitlement to compensation. As an initial matter, with regard to the privilege logs issue, we note that the special master's order is silent as to the preparation of privilege logs. Accordingly, we conclude that this issue is not ripe for our review and that SNHD should seek a final determination regarding its asserted right to prepare any privilege logs through proceedings before the special master and/or district court before seeking extraordinary relief from this court.² Also not ripe for our review is any issue regarding compensation for SNHD's participation in the underlying proceedings. Indeed, the resolution of this issue in the underlying action is likewise premature until SNHD has actually provided the discovery sought by PacifiCare. Accordingly, we conclude that our intervention by way of extraordinary relief is not warranted with regard to the privilege log and compensation issues.


¹As we conclude that, based on its arguments, SNHD has failed to demonstrate that the discovery at issue here is covered by the investigatory privilege, we need not address the special master's conclusion that the investigatory privilege applied only to agencies with enforcement powers.

²We reject SNHD's assertion that the depositions sought by PacifiCare should be held in abeyance until the privilege logs issue is resolved.

Having considered the petition, answers, and reply, we conclude that our intervention by way of extraordinary relief is not warranted.³ Accordingly, we deny the petition. Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

It is so ORDERED.⁴


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas

³To the extent that any arguments advanced by SNHD are not specifically addressed in this order, we have considered SNHD's remaining arguments and conclude that they are without merit.

⁴As we conclude that oral argument of this matter is not warranted, we deny SNHD's December 6, 2010, motion requesting oral argument. Additionally, in light of this order, we vacate the temporary stay entered by this court's October 28, 2010, order and extended by this court's November 10, 2010, order. Finally, as we deny this petition, we deny as moot the product defendants' December 9, 2010, motion for leave to file an amicus brief. The clerk of this court shall return, unfiled, the proposed amicus brief and appendix, which was provisionally received in this court that same day.

cc: Hon. Michelle Leavitt, District Court Judge
Marquis & Aurbach
Matthew L. Sharp
Friedman, Rubin & White
Friedman/Rubin-Anchorage
Gerald I. Gillock & Associates
Bryan Cave LLP
Jones Vargas/Las Vegas
Eighth District Court Clerk