

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

FELITA McGEE, as Independent Administrator	)	
of the Estate of Michael Carter, Sr., Deceased,	)	
and as next-of-kin,	)	
	)	
Plaintiff,	)	Case No. 2:16-cv-02221-CSB-EIL
	)	
vs.	)	
	)	
MACON COUNTY SHERIFF'S DEPARTMENT,	)	The Honorable Colin S. Bruce
DECATUR MEMORIAL HOSPITAL, DMH	)	United States District Judge
CORPORATE HEALTH SERVICES, ROBERT	)	
BRACO, M.D., JO BATES, LPN, RANDELL	)	The Honorable Jonathan E. Hawley
WEST, LARRY PARSANO, TERRY COLLINS,	)	United States Magistrate Judge
MICHAEL PATTON, JOSHUA PAGE, and	)	
COUNTY OF MACON ILLINOIS,	)	
	)	
Defendants.	)	

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**RESPONSE TO PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO FED. R.  
CIV. P. 37 AGAINST DEFENDANT DECATUR MEMORIAL HOSPITAL AND  
DEFENDANT ROBERT BRACO, M.D.**

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Defendants, DECATUR MEMORIAL HOSPITAL and ROBERT BRACO, M.D., by their attorneys KEHART, PECKERT, WISE, TOTH & LEWIS, hereby respond to Plaintiff's Motion for Sanctions against the aforementioned Defendants stating as follows:

**INTRODUCTION**

Plaintiff filed her Complaint on July 18, 2016. Waivers of Service of Summons were not requested and mailed out to the defendants until November 21, 2016, more than 120 days after the Complaint was filed. On January 20, 2017, and as friends of the Court, Defendants, Decatur Memorial Hospital, Robert Braco, M.D. (also referred to hereinafter as "Dr. Braco"), and Jo Bates, LPN (also referred to hereinafter as "Nurse Bates"), filed a Motion to Dismiss Plaintiff's

Complaint pursuant to FRCP 12(b)(5) asserting that Plaintiff failed to properly effectuate service pursuant to FRCP 4(m) and that Plaintiff's Complaint must be dismissed. *See* Docket Nos. 7-8. Because of the errors she made in serving the Defendants, on March 1, 2017, Plaintiff voluntarily dismissed her case as to Decatur Memorial Hospital, DMH Corporate Health Services, Robert Braco, M.D., and Jo Bates, LPN, only. The case proceeded as to the remaining defendants.

On June 28, 2017, Plaintiff filed her Amended Complaint naming Decatur Memorial Hospital, DMH Corporate Health Services, Robert Braco, M.D., and Jo Bates, LPN, and others, as Defendants. On August 1, 2017, summonses were issued for Decatur Memorial Hospital, Robert Braco, M.D., and Jo Bates, LPN. Defendant, Decatur Memorial Hospital, was served on August 10, 2017 (*see* Docket No. 34 – Affidavit of Service). Defendant, Nurse Bates, was served on September 26, 2017 (*see* Docket No. 49 – Affidavit of Service filed December 22, 2017). Plaintiff filed her Motion to Extend Time to Serve Defendant Robert Braco, MD, Pursuant to FRCP 4(m) on November 6, 2017 (*see* Docket No. 43). Defendant Robert Braco, M.D., was finally served December 18, 2017 (*see* Docket No. 50).

On January 5, 2018, Plaintiff propounded Interrogatories to Defendant, DMH, and Requests to Produce to Defendants, DMH and Dr. Braco. On February 5, 2018, DMH and Dr. Braco's responses were sent to Plaintiff's counsel.

On December 31, 2018, Plaintiff propounded 3<sup>rd</sup> Request for Production to DMH and Dr. Braco. DMH provided its responses on March 28, 2019, which was compliant with the Court's order. At this time, Dr. Braco's responses have not been tendered because counsel is waiting for his attestation. Counsel has stated to Plaintiff's counsel that there will be no additional production. Dr. Braco has nothing to tender in response to the Requests to Produce.

## ARGUMENT

### **A. Plaintiff's Motion for Sanctions should be denied.**

A court's inherent power gives it the authority to impose "a sanction for abuse of the judicial process, or, in other words, for bad faith conduct in litigation." *Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1256 (10<sup>th</sup> Cir. 2015). Here, sanctions are not substantially justified. Plaintiff does not have any evidence of a willful violation or bad faith and the mere fact that additional information was learned in the deposition of witness Debbie Acciavatti, which Plaintiff followed up on, and which Defendants responded to in the time allotted by this Court does not warrant sanctions. The purpose of discovery and depositions is to gather evidence that might not have been readily apparent. Throughout the discovery process, the undersigned has had numerous conversations with Katherine Anderson, Vice President of Legal Affairs and Corporate Compliance at Decatur Memorial Hospital ("DMH") and Defendant Robert Braco, M.D., regarding the responses to the requested discovery in order to obtain accurate and complete responses. Further, the undersigned has consistently communicated the status of the discovery responses to Plaintiff's counsel.

After the deposition of Debbie Acciavatti, a former employee of DMH, on December 7, 2018, the undersigned learned of potentially relevant notes regarding the termination of former DMH employee and Defendant, Jo Bates. On December 31, 2018, Plaintiff tendered her Third Request to Produce. On March 21, 2019, after a hearing on Plaintiff's Motion to Compel, the Court gave Defendants 7 days, or until March 28, 2019, to tender its responses to the Third Requests to Produce and DMH did so.

The personnel file for Jo Bates was provided to Plaintiff, which included on pages 47-49 of the production, a document entitled "Documentation regarding Jo Bates – Macon County Jail

Nurse.” (See Exhibit A). The document has entries for the 17<sup>th</sup>, 18<sup>th</sup>, 26<sup>th</sup>, 28<sup>th</sup>, and 31<sup>st</sup> days of August 2015. The entries contain what could only be considered quadruple or even quintuple hearsay. Specifically, (1) the DMH Human Resources employee, Jennifer Allen, who drafts the documents writes that (2) Debbie Acciavatti said (3) that jail administration said (4) that Jo made some “unprofessional comments” during the investigation. (See Exhibit A at August 18<sup>th</sup> entry). Jennifer Allen also records that (1) she was told by Debbie Acciavatti (2) that the Sheriff and Lieutenant told Debbie Acciavatti (3) that they were told by correctional officers that (4) Jo Bates made unprofessional statements in front of (5) other correctional officers or investigators. (See Exhibit A at August 26, 2015 entry). Further, the document reflects that Jo Bates told the Human Resources employee that she made no such statements. (See Exhibit A at August 31, 2015 entry). The “statements” contained in the personnel file, to the extent they could even be considered statements, are inadmissible hearsay, are not evidence, and are entirely non-prejudicial to the Plaintiff and her case.

**B. Plaintiff’s request to re-depose 9 to 13 deponents should be denied or at least strictly limited and at her expense.**

Federal Rule of Civil Procedure 30(a)(2)(B) requires leave of court before a witness may be deposed a second time. A court must limit the frequency or extent of discovery if the party seeking discovery has had ample opportunity to obtain the information by discovery in the action. Fed. R. Civ. P. 26(b)(2)(C)(ii). Court’s disfavor repeat depositions except in certain limited circumstances. *Graebner v. James River Corp.*, 130 F.R.D. 440, 441 (N.D. Cal 1989). A court should deny leave to conduct a second deposition of a witness – even if relevant documents are produced subsequent to the witness’ deposition – if the party taking the deposition either failed to request those documents in a timely fashion or chose to conduct the deposition prior to the completion of document discovery. *Lowery v. Noble Drilling Corp.*, No. Civ. A. 96-3968,

1997 WL 675328, \*1-2 (E.D. La. Oct 29, 1997); *Morrison v. Stephenson*, No. 06-cv-283, 2008 WL 145017, \*2 (S.D. Oh. Jan. 10, 2008).

Here, Plaintiff has already questioned numerous defendants regarding statements they recalled during the relevant timeframe and/or their recollection regarding the termination of Nurse Jo Bates.

1. **Robert Braco, M.D.**, was deposed on March 28, 2018, from 8:58 a.m. – 5:57 p.m. During the deposition, Dr. Braco testified that he has not spoken to Nurse Bates in regard to any of the events occurring on July 18, 2015, and does not recall seeing her since July 18, 2015 (*See Exhibit B – Deposition of Dr. Braco*, 151:11-23).
2. **Jo Bates, LPN**, was deposed on March 8, 2018, from 12:16 p.m. – 6:21 p.m. During her deposition, she testified that if a correctional officer said that she informed them that Michael Carter was faking his condition that the correctional officer would be lying. (*See Exhibit C – Deposition of Jo Bates*, 17:21-25).
3. **John Ridley**, former Chief Operating Officer and current Vice President of Professional Services at DMH, was deposed on April 10, 2018, from 9:03 a.m. – 11:15 a.m. testified that he did not recall Jo Bates. (*See Exhibit D – Deposition of John Ridley*, 68:11-17; 87:20-24; 98:24-99:2) Contrary to Plaintiff's inappropriate accusation in his Motion for Sanctions that John Ridley was not truthful in his deposition, John Ridley also testified that Debbie Acciavati advised him of Michael Carter's death and, while he does know he had conversations with her and that he has knowledge of other conversations regarding this incident, he does not have a specific recollection of those conversations (*Id.* 105:22-108:17).

Additionally, during the course of Mr. Ridley's deposition, he identified the general counsel for DMH in 2014 as Paige Toth (*Id.* 99:24-100:4). Mr. Ridley also testified that he had no conversations with anyone at Macon County Jail including correctional officers (*Id.* 100:17-101:3). Mr. Ridley further testified that the individual at DMH with the most knowledge with respect to nursing standards and training of nurses in 2015 is Linda Fahey, who was DMH's Chief Nursing Officer at that time and current Chief Operating Officer (*Id.* 101:8-102:5). Mr. Ridley further identified that the hospital's medical office governs standards related to doctors and that Julie Brilley was the director of the medical office at that time (*Id.* 102:9-103:6).

4. **Lawrence Parsano, Correctional Officer**, was deposed on April 10, 2018 from 11:34 a.m. – 2:16 p.m. During his deposition, Officer Parsano testified that Nurse Bates never talked to him about Michael Carter (*See* Exhibit E – Deposition of Lawrence Parsano, 88:11-24; 91:5-23). Officer Parsano also testified that he did not recall Nurse Bates saying Michael Carter was “faking.” (*Id.* 62:3-6). This recollection of Officer Parsano is supported by the audio recording of his interview with the Illinois State Police beginning at approximately 9:50 as produced by the Macon County Sheriff's Office in discovery.
5. **Randell West, retired Corporal**, was deposed April 11, 2018, from 9:00 a.m. – 11:10 a.m. During Officer West's deposition, he testified as to what he recalls regarding conversations he had with Jo Bates. Specifically, he recalls Jo Bates telling him that Mr. Carter was fine and “faking.” (*See* Exhibit F, Deposition of Randell West, 25:20-27:23; 52:23-54:4). This recollection of Corporal West is

further supported by the audio recording of his interview with the Illinois State Police beginning at approximately 6:12 and as produced by the Macon County Sheriff's Office in discovery. He further states that he has no recollection of any other conversation with Jo Bates (*Id.* 28:25-29:24). Corporal West also testified that he never spoke with Jo Bates about the incident after the fact (*Id.* 9-11).

6. **Sheriff Thomas Schneider**, Retired, was deposed on April 11, 2018 from 11:50 a.m. – 2:50 p.m., and testified that he indicated to DMH that he did not want Bates at the jail after the incident (*See* Exhibit G, Deposition of Thomas Schneider, 66:24-68:15). Sheriff Schneider further testifies as to the reasons why he asked that it be communicated to DMH that Nurse Bates not return to the jail (*Id.* 88:2-90:6) and that he does not recall who he spoke with at DMH and that he may have communicated to DMH through Lieutenant Hotwick (*Id.* 89:15-90:6).
7. **Terrence Collins, Correctional Officer**, was deposed March 27, 2018, from 10:00 a.m. – 4:29 p.m. Officer Collins testified that he did not recall speaking with Nurse Bates after Michael Carter died (*See* Exhibit H, Deposition of Terrence Collins, 45:23-46:1). Officer Collins further testified as to what he recalls Nurse Bates saying regarding Michael Carter (*Id.* 85:10-22; 123:23-124:3; 134:17-135:14; 138:13-25).
8. **Joshua Page, Correctional Officer**, was deposed November 6, 2018, from 1:06 p.m. – 4:07 p.m., and he testified as to his recollection of what Jo Bates said regarding Michael Carter (*See* Exhibit I, Deposition of Joshua Page, 110:19-111:19). Page further testified that he did not recall having any conversation with

anyone regarding the termination of Jo Bates' employment and testified regarding his understanding of her termination (*Id.* 124:5-126:5)

9. **Michael Patton, Correctional Officer**, was deposed on November 6, 2018, from 9:04 a.m. – 12:50 p.m. Officer Patton testified that he had no recollection of hearing Nurse Bates say that Michael Carter was faking (*See* Exhibit J, Deposition of Michael Patton, 77:1-12; 78:9-16). Officer Patton testified that he had no recollection about Nurse Bates demeanor (*Id.* 158:21-159:17) and, further, that he has no understanding of what happened to her employment after the incident (162:5-10).
10. **Donald William Hotwick, Lieutenant**, was deposed December 11, 2018, from 11:32 a.m. – 2:04 p.m. Lt. Hotwick testified as to his recollection of a phone call with Corporal Austin regarding Nurse Bates, specifically, that he recalls that Corporal Austin complained of Nurse Bates in relation to the incident, but did not have any specific recollection regarding what was said (*See* Exhibit K, Deposition of Lieutenant Hotwick, 71:7-73:23). Plaintiff's counsel followed up with Lt. Hotwick regarding Corporal Austin's complaint asking if he knew why she was mad and he had no specific recollection (*Id.* 76:6-19). Lt. Hotwick further testified that he spoke with Nurse Bates in his office immediately following the incident and has specific recollection regarding Nurse Bates stating she was going boating after her shift. (76:20-80:11). Lt. Hotwick also recalls speaking with Debbie Acciavatti and asking that Nurse Bates not return to the jail (84:15-18). Plaintiff's counsel also followed up on why Lt. Hotwick asked Debbie Acciavatti to reassign Jo Bates (85:7-86:22).

11. **Ronke Austin, Corporal**, was deposed on November 7, 2018, from 12:40 p.m. – 2:24 p.m. During her deposition, Corporal Austin testified about conversations and interactions she had with Nurse Bates on July 18, 2015, and in relation to Michael Carter. She testified that she did not know when Jo Bates’ employment ceased at the jail (*See* Exhibit L, Deposition of Ronke Austin, 48:15-21), she also testified as to her recollection of Nurse Bates’ demeanor on July 18, 2015 (*Id.* 49:1-12).
12. **Ronald Atkins, Sergeant**, was deposed March 25, 2019, from 3:59 p.m. to 6:17 p.m. During Sgt. Atkins’ deposition, he testified that he never drew any type of impression as to the professionalism of Jo Bates (*See* Exhibit Q, Deposition of Ronald Atkins, 32:20-24; 33:21-34:1; 37:21-25). Sgt. Atkins further testified that he had no personal knowledge regarding Nurse Bates employment following the incident (*Id.* at 64:4-14) or any personal knowledge regarding reports of things Nurse Bates said on July 18, 2015 (*Id.* at 85:15-22).
13. **Edna Morgan, RN and former Nurse Manager**, was deposed on March 26, 2019 from 9:06 a.m. to 12:41 p.m. Nurse Morgan testified that she was aware that Nurse Bates had been terminated by DMH and that she did not consult in the termination. (*See* Exhibit M, Deposition of Edna Morgan, 56:25-58:1). Nurse Morgan also testifies that she does not recall any specific complaints she received about Nurse Bates (*Id.* at 59:8-16). Nurse Morgan further testifies that she learned of Michael Carter’s status when she received a text message from Nurse Bates, that she does not recall having a telephone conversation with Nurse Bates, and she does not recall being told that Nurse Bates appeared to lack empathy as related to

the condition of Michael Carter. (*Id.* at 78:2-84:9). Nurse Morgan testified that she was told that Jo Bates left the jail to go boating by officers at the jail, but she did not recall who. (*Id.* 83:14-84:5). During the course of this deposition, Plaintiff confirmed Nurse Morgan's cell phone number and service provider and did not issue any subpoena for records relating to the cell phone prior to the close of discovery or as of the date of this Response being filed (*Id.* at 83:1-10).

14. **Debbie Acciavatti Renton**, former DMH employee, was deposed on December 7, 2018, from 12:02 p.m. to 3:30 p.m. Ms. Acciavatti testified regarding the conversations she had with Lt. Hotwick regarding Nurse Bates reporting to him that she was going to go boating and that he did not want Nurse Bates to return to the jail (*See* Exhibit N, Deposition of Debra Acciavatti Renton, 85:4-88:13). Ms. Acciavatti testified that she did not recall any further details of the conversation with Lt. Hotwick (*Id.* at 88:6-13). Ms. Acciavatti testified that she did have a conversation with Nurse Bates regarding Lt. Hotwick's concern for her alleged lack of professionalism and that she did not recall what was said during the conversation (*Id.* at 102:14-103:1; 156:1-15). Ms. Acciavatti also testified as to the reasons she recommended the termination of Jo Bates and who was involved in the decision (*Id.* at 112:23-113:9; 141:7-24).

The above demonstrates that Plaintiff had the opportunity to follow up on the alleged statements of Nurse Bates referenced in the personnel file and in almost every instance the officers and DMH staff do not recall. Certainly, the jail administration and Corporal Austin have been most critical of the alleged actions and statements of Nurse Bates and no one has indicated a recollection of such purported statements that are noted in the personnel file and also denied by

Nurse Bates in the same file. In fact, during the deposition of Sheriff Schneider, Plaintiff's counsel chose not to pursue that during his questioning. At no time, during the course of Illinois State Police investigation in the days immediately following the incident in 2015 and again during these depositions has any witness indicated there is any memory of these so-called "statements" made that were noted in the personnel file.

Plaintiff argues that Nurse Bates is described as saying "if you need anything, I'm going to the boat and will be drinking" as if that is the first time he has been made aware of such an alleged statement, which is not the case. (Plaintiff's Motion for Sanctions at p. 15) As noted above, this has come up in at least three depositions prior to Defendants tendering their Responses to Plaintiff's Third Request to Produce. Additionally, and contrary to Plaintiff's argument in his Motion for Sanctions (*Id.*) there is no evidence of deliberate indifference contained in the personnel file. There are no statements contained in the personnel file, rather references to something Nurse Bates may have said. These are notes that can only be construed as quadruple, or even, quintuple hearsay. This is not admissible. Moreover, each witness deposed has already testified about what they remember. No one has testified that they remember a statement such as what is referenced in the personnel file.

The fact of the matter is that Debbie Acciavatti has been deposed. She is the individual who had the correspondence with Jennifer Allen, who wrote the documentation that appears in the personnel file. Debbie Acciavatti is also the individual who had the conversations with the jail administration regarding their request that Nurse Bates not return to the jail. Plaintiff's counsel asked Debbie Acciavatti numerous times during the course of her deposition what she recalls regarding these conversations and she stated what she remembers.

Not one person who has been deposed has testified regarding this alleged “statement” made by Jo Bates. Interestingly, numerous witnesses deposed recall Dr. Braco’s statement made about the ambulance. At least three witnesses deposed recall statements related to Nurse Bates going on the boat. Not one witness has indicated that they recall a statement made about “natural selection” despite the fact that such a statement, if even made, is arguably much more inflammatory and memorable. Plaintiff’s counsel had the opportunity to ask each of these defendants regarding what statements they remember, and to the extent he did not, new depositions of 9-13 witnesses is not warranted by the contents of the personnel file.

**C. Defendants’ Responses to Plaintiff’s First Interrogatories and Requests to Produce were Responsive and Complete.**

Plaintiff propounded Interrogatories to Defendant, DMH, on January 5, 2018. No interrogatories were sent for Defendant, Robert Braco. Plaintiff propounded Requests to Produce to all defendants, including DMH and Robert Braco on January 5, 2018. Defendants DMH and Dr. Braco provided their respective responses through their counsel on February 5, 2018 with supplementation by DMH on February 27, 2018 and March 2, 2018 (*See* emails attached as Exhibits O and P). Plaintiff at no time indicated that the responses received were deficient or lacked something counsel was specifically looking for, such as a personnel file.

The production of the personnel file is not responsive to any of the interrogatories or requests to produce cited by Plaintiff’s counsel in the instant Motion for Sanctions. The notes in the personnel file are not statements and do not relate to the medical care and treatment of the Michael Carter (Plaintiff’s Interrogatory No. 2). The notes in the personnel file do not reflect conversations regarding the manner in which the medical care and treatment were provided to Michael Carter (Plaintiff’s Interrogatory No. 13), the notes in the personnel file were not, and are not, claimed as privilege (Plaintiff’s Interrogatory No. 19), and the personnel file does not

contain any additional information regarding the names of individuals who have knowledge of the facts of the medical care and treatment of Michael Carter (Plaintiff's Interrogatory No. 20). Similarly, the notes in the personnel file are not responsive to Plaintiff's Requests to Produce 1 and 3 in so far as its contents do not relate to the circumstances surrounding Michael Carter's death or any investigation into the death of Michael Carter (Plaintiff's Requests to Produce 1 and 3).

Defendants responded to Plaintiff's requests in good faith. Plaintiff at no time requested documentation related to Jo Bates' employment with DMH or notes regarding her termination. Plaintiff's counsel requested information regarding the medical care and treatment of Michael Carter. There is no such information in the personnel file. When Plaintiff propounded a third request to produce seeking notes related to Nurse Bates' termination as testified to by Debbie Acciavatti, DMH turned the file over to Plaintiff's counsel without objection and within the timeframe provided by the Court.

**D. Defendant is not required to identify its 30(b)(6) representative in advance of the deposition.**

Plaintiff includes statements within her motion that Defendants have not identified the 30(b)(6) witness. In fact, the undersigned counsel recalls two separate occasions where she identified Linda Fahey as the 30(b)(6) representative. Once in person in her Decatur office when counsel were present for depositions in this case and another time over the phone with Plaintiff's counsel on March 29, 2019 (Plaintiff's counsel denies that Defendant named Linda Fahey on the phone March 29<sup>th</sup>). The identity of the 30(b)(6) witness is irrelevant and it is not required that the Defendant identify the 30(b)(6) witness in advance of the deposition. The corporate representative, in essence, has no personal opinions for the sake of this type of deposition so who is designated is of no consequence and, in fact, the corporation can change their corporate

representative at any time leading up to the deposition so long as the deponent produced testifies fully and completely with respect to the topics identified in the notice. Defendant-DMH has been ordered to produce a corporate representative, which it will on the date the deposition scheduled. Plaintiff's counsel has made no effort to schedule this since the teleconference with the court regarding DMH's requirement to produce said corporate representative.

**E. Plaintiff's counsel has other means of obtaining at least some of the information referenced in her motion other than re-deposing witnesses.**

Plaintiff's counsel has requested text messages from DMH, however, the text messages at issue were between employees no longer employed by DMH. Deposition testimony reflect that there were text messages between Jo Bates and Nurse Morgan and that Nurse Morgan forwarded a text message from Jo Bates to Debbie Acciavatti. Plaintiff's counsel confirmed with Nurse Morgan that the cell phone number she has currently is the same she had in July 2015. He also confirmed her cell phone provider. Plaintiff's counsel has not attempted to subpoena these records.

**F. As demonstration of its good faith and ongoing willingness to participate in good faith in the discovery process, DMH is re-examining its facilities for emails related to this occurrence and searching Corporate Health again for notes made by Debbie Acciavatti and any other documents related to this occurrence.**

Counsel for DMH has confirmed multiple times with DMH and Dr. Braco that there is nothing additional to produce with respect to his matter. However, DMH is allowed, and should, continue to investigate as the case progresses. DMH has represented to counsel that it has gone through DMH Corporate Health multiple times looking for notes and documents that would be responsive to Plaintiff's discovery and has not discovered anything additional. Counsel for Dr. Braco has confirmed with him multiple times that he has no emails or other documentation to

turn over in response to Plaintiff's discovery requests. Because there is nothing to turn over does not mean that these Defendants are acting in bad faith.

**G. Plaintiff's requested relief is unreasonable, disproportionately punitive, and not directly related to the purported sanctionable conduct.**

Whether a court imposes discovery sanctions is a discretionary decision, and the scope of that discretion narrows as the severity of the sanction increases. *Bergstrom v. Frascone*, 744 F.3d 571, 576 (8<sup>th</sup> Cir. 2014). There is no evidence that DMH failed to comply with discovery willfully or in bad faith. Accordingly, the severe sanctions set forth in Rule 37, and those sought by Plaintiff, are not warranted. Plaintiff has not sufficiently established prejudice and, in fact, acknowledges that Defendants had no objection to extending the discovery deadline to accommodate additional (reasonable) steps Plaintiff would need to take to follow up on the contents of the personnel file.

The sanctions sought by Plaintiff in subparts (a)-(c) are completely unwarranted by the alleged sanctionable actions of the Defendants.

Additionally, Plaintiff's requested sanction at subpart (d) that Katherine Anderson be barred from attesting to discovery compliance in this matter is improper, unnecessarily argumentative, and petty. Plaintiff's requested sanction at subpart (e) is improper in that it is vague - Plaintiff has not identified what materials she seeks in any way and it is also not related to the alleged sanctionable conduct. Subpart (f) is also unreasonable and unnecessary. The Vice-President of Corporate Compliance and Legal Affairs at DMH has signed the attestations for DMH and has participated in good faith in the discovery process. This is a shameful and completely inappropriate attack on her character and professionalism by Plaintiff. Finally, Defendants deny that Plaintiff need re-depose any of the 10-13 witnesses and, to the extent the

Court grants Plaintiff leave to do so, would request that the scope of the depositions be strictly narrowed and at the expense of the Plaintiff.

WHEREFORE, for the above and foregoing reasons, Defendants respectfully request this Court deny Plaintiff's Motion for Sanctions.

Dated: April 15, 2019

Respectfully submitted,

Decatur Memorial Hospital,  
Defendant,

BY: /s/ Regan Lewis (#6301846)  
Kehart, Peckert, Wise, Toth & Lewis  
Its Attorneys

**PROOF OF SERVICE**

The undersigned certifies that the foregoing Response to Motion for Sanctions was filed on the 15th day of April 2019 through the ECF system with the United States District Court for the Central District of Illinois for delivery to registered participants for the litigation in which said document has been filed.

/s/ Regan Lewis

Michael J. Kehart – Lead Attorney  
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