

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NATIONAL ABORTION FEDERATION, et al.,)
)
) Plaintiff,)
)
) vs.) 04 C 55
)
) JOHN ASHCROFT,)
)
) Defendant.)
)
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)
) NORTHWESTERN MEMORIAL HOSPITAL,)
)
) Movant.)

MEMORANDUM OPINION

CHARLES P. KOCORAS, Chief District Judge:

This matter comes before the court on Northwestern Memorial Hospital's ("Northwestern") motion to quash a subpoena pursuant to Federal Rule of Civil Procedure 45(c)(3)(A). For the reasons set forth below, the motion is granted.

BACKGROUND

In November 2003, the National Abortion Federation ("NAF"), a professional organization of abortion providers, and seven individual physicians commenced a civil action against the U.S. Attorney General in the Southern District of New York.

National Abortion Federation et al. v. Ashcroft, Case No. 03 Civ. 8695 (RCC) (S.D.N.Y. 2003). This pending lawsuit challenges the constitutionality of the recently enacted Partial Birth Abortion Ban Act of 2003 (“PBABA”), 18 U.S.C. § 1531, which prohibits certain late-term abortion procedures. The NAF and the physician plaintiffs allege that the PBABA is unconstitutional under Supreme Court precedent because it contains no exception for preserving a woman’s health. One of the plaintiffs is Dr. Cassing Hammond, an attending physician at Northwestern who performs abortions that would be banned under the PBABA. Northwestern is a large teaching hospital in Chicago which maintains no facilities in New York and is not a party to the lawsuit. Dr. Hammond has privileges to practice at Northwestern but he is not a Northwestern employee.

In support of the NAF plaintiffs’ motion for a temporary restraining order, which was filed concurrently with the complaint, Dr. Hammond submitted a declaration in which he made assertions concerning his practice as an abortion provider. Dr. Hammond’s declaration states that he provides PBABA-banned abortions to women with a variety of medical conditions for the protection of their health.

On November 21, 2003, government attorneys representing the Attorney General served Dr. Hammond with interrogatories and document requests. These requests asked Dr. Hammond to identify the patient medical record numbers for the medically

necessary abortion procedures that Dr. Hammond described in his declaration. The government also requested Dr. Hammond to produce the medical records of the patients who received the above-described abortions. The government's document request asked only for the medical records of patients having abortions during the past two years. The requests appear to have been sought for the purpose of testing the assertions in Dr. Hammond's declarations. At best, the government is seeking possible impeachment material. Dr. Hammond responded to the government that he does not possess or control the medical records in question as they are the property and in the possession of Northwestern.

After learning that Northwestern possessed and controlled the medical records to be identified by Dr. Hammond, on December 18, 2003, the government served Northwestern with a subpoena pursuant to Federal Rule of Civil Procedure 45. The subpoena sought production of "[a]ll medical records associated with those medical record numbers to be identified by [Dr. Hammond] in response to the discovery demand served upon him" in NAF. Accompanying the subpoena was an Order signed by District Judge Richard Conway Casey, who is presiding over the litigation in New York. The Order authorizes Northwestern, as a non-party witness, to disclose to the government the medical records sought by the attached subpoena in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L.

