

# TRIAL TALK

COLORADO TRIAL LAWYERS ASSOCIATION

October/November 2007

***53 Years on the Side of People***  
*Serving Trial Lawyers for 52 years*

**Volume 56 Issue 6**



# A Menu for Objections to Requests for Production in an Auto Case

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## Introduction

The purpose of this article is twofold: to make responding and objecting to requests for production of documents easier by providing a menu for objections; and to help you to preserve objections – because objections are waived if they are not timely asserted. However, the author provides the menu with some trepidation because you can misuse it, intentionally or unintentionally, to obstruct and hinder the discovery process. Intentional misuse (abuse) is unethical and inexcusable. Unintentional misuse is the result of laziness and mindless copying and pasting; it is also inexcusable (and may rise to the level of being unethical). So copy and paste with circumspection.

## Objections

Below is a non-exclusive list of permissible objections.

1. Overbroad<sup>1</sup>
2. Unduly burdensome or expensive<sup>2</sup>
3. Annoyance, harassment, embarrassment, oppression<sup>3</sup>
4. Not stated with reasonable particularity<sup>4</sup>
5. Seeks material that is not relevant to any claim or defense in this action<sup>5</sup>

6. Not reasonably calculated to lead to the discovery of admissible evidence<sup>6</sup>
7. Seeks privileged materials<sup>7</sup>
8. Seeks confidential materials<sup>8</sup>
9. Seeks materials not in the possession, custody or control of the party<sup>9</sup>
10. Premature<sup>10</sup>
11. Seeks to vary the procedures and timelines of Rules 16 or 26 or the Case Management Order<sup>11</sup>
12. The requesting party already has the requested materials or can obtain the materials as easily as the responding party.<sup>12</sup>
13. The requested materials are public records and are equally accessible to the requesting party.<sup>13</sup>

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The menu of objections should be organic, not static. That is, you should add new elements to the menu as you encounter recurrent requests. It is easier to find new elements if they were added to an alpha-numeric list than to a strictly numeric list; e.g., add health insurance files as “D-3”. The alpha-numeric list is also preferable to an alphabetic list because related items can be grouped together.

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## A. MEDICAL RECORDS

### 1. All medical records regarding the plaintiff.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

### 2. All medical records in the 10 years prior to the subject incident.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Copies of relevant, non-

privileged medical records were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

### 3. All reports, records, letters, notes, memoranda, correspondence and documents regarding plaintiff's medical care.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Copies of relevant, non-privileged medical records and documents were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records and documents are provided herewith).

### 4. All incident related medical records.

Objection: The plaintiff objects to this request to the extent that it seeks materials regarding body parts, injuries or conditions not at issue in this case. The body parts, injuries or conditions at issue in this case are x, y and z. Medical records regarding body parts, injuries or conditions other than x, y and z are not at issue in this case and thus are privileged. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff's initial disclosures

(or, copies of relevant, non-privileged medical records are provided herewith).

## 5. All incident related medical bills.

Objection: The plaintiff objects to this request to the extent that it seeks materials regarding injuries or conditions not at issue in this case. The body parts, injuries or conditions at issue in this case are x, y and z. Medical records regarding body parts, injuries or conditions other than x, y and z are not at issue in this case and thus are privileged. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

## B. PRE-EXISTING AND SUBSEQUENT INJURIES AND CONDITIONS

### 1. Records re pre-existing injuries and conditions.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

### 2. Subsequent injuries and conditions.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff's initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

## C. OTHER CLAIMS AND ACTIONS

### 1. Insurance claims

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this

request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

### 2. Legal claims and actions

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable. Documents not related to personal injury claims or defenses are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

### 3. Workers Compensation claims

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at

issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).

- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

## 4. Social Security claims

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

## D. INSURANCE FILES

### 1. PIP file

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in

parts and conditions not at issue in this case are not relevant and therefore are not discoverable. The body parts, injuries or conditions at issue in this case are x, y and z. Medical records regarding body parts, injuries or conditions other than x, y and z are not at issue in this case and thus are privileged – regardless of where the records are located; e.g., located in a PIP file. Not all medical records in a PIP file are “at issue” and thus discoverable. First, PIP carriers routinely have their insured sign blanket release authorizations and they obtain both incident related and non-incident related medical records (e.g., OB-GYN records or Viagra prescriptions in a broken finger case). Second, an injured party releasing his or her medical records to the PIP carrier does not waive the physician/patient privilege – as a matter of law. *Devenyns v. Hartig*, 983 P.2d 63, 66 (Colo.App.1998).

- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

### 2. Insurance files

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in

this case are not relevant and therefore are not discoverable. The body parts, injuries or conditions at issue in this case are x, y and z. Medical records regarding body parts, injuries or conditions other than x, y and z are not at issue in this case and thus are privileged – regardless of where the records are located; e.g., located in an insurance file. Not all medical records in an insurance file are “at issue” and thus discoverable. First, insurance carriers routinely have their insureds sign blanket release authorizations and they obtain both incident related and non-incident related medical records (e.g., OB-GYN records or Viagra prescriptions in a broken finger case). Second, an injured party releasing his or her medical records to the PIP carrier does not waive the physician/patient privilege – as a matter of law. *Devenyns v. Hartig*, 983 P.2d 63, 66 (Colo.App.1998). The same principle would also apply to the release of records to a health insurance carrier or other insurance carrier.

- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

## E. STATEMENTS AND REPORTS

### 1. Statements

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.

- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005). Second, the request is objectionable to the extent that it seeks attorney/client communications, work product and/or consulting expert materials and information.
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

## 2. Reports

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005). Second, the request is objectionable to the extent that it seeks attorney/client communications, work product and/or consulting expert materials and information.
- It seeks materials that are not in the possession, custody or control of the plaintiff.

- It is premature.
- It seeks to vary the procedures and timelines of C.R.C.P. 16 or the Case Management Order.

Response: (a) Plaintiff does not have any documents responsive to this request; or (b) Copies of documents responsive to this request were provided in the plaintiff's initial disclosures; or (c) copies of documents responsive to this request are provided herewith.

## F. CLIENT DIARIES AND OTHER PERSONAL MATERIALS

### 1. Client diaries, journals and calendars

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable. Much of the material in the plaintiff's diaries, journals and calendars has absolutely nothing to do with the claims and defenses in this actions and therefore such material is not relevant and not discoverable.
- It seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005). Second, the request is objectionable to the extent that it seeks attorney/client communications, work product and/or consulting expert materials and information.
- The plaintiff's diaries, journals and calendars are personal and confidential and are protected by a qualified privilege pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo.1999).

## 2. Marriage license; divorce decree

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- The plaintiff's marital documents are personal and confidential and are protected by a qualified privilege pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo. 1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo. 1999).

## G. PHOTOGRAPHS AND VIDEOTAPES

### 1. Photographs and videotapes

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- It seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005). Second, the request is objectionable to the extent that it seeks attorney/client communications, work product and/or consulting expert materials and information.
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: Photographs and videotapes responsive to this request were provided in the plaintiff's initial disclosures (or, copies of photographs and videotapes responsive to this request are provided herewith).

### 2. All photographs of the plaintiff subsequent to the incident.

Objection: The plaintiff objects to



this request on the following grounds:

- The request is overbroad and unduly burdensome. [insert details why]
- The request seeks materials that are not relevant to any claim or defense in this action. Most of the plaintiff's photographs have nothing to do with the claims and defenses in this action and therefore such photographs are not relevant. C.R.C.P. 26 does not require disclosure of non-relevant materials. They are not discoverable.
- The request is objectionable to the extent that it seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005). Second, the request is objectionable to the extent that it seeks work product or consulting expert materials and information.

Even if the request is asserted to be reasonably calculated to lead to the discovery of admissible evidence (which is doubtful), the request is essentially harassing and oppressive and the plaintiff is entitled to a protective order under C.R.C.P. 26(b)(2) that the discovery may be had on specified terms and conditions and under C.R.C.P. 26(b)(4) that the scope of the discovery be limited to certain matters. [insert desired terms, conditions, limitations]

- Finally, the plaintiff's photographs are personal and confidential and are protected by a qualified privilege pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo. 1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo. 1999). The *Martinelli* three part test: (1) Does the responding party have a legitimate expectation that the materials will not be disclosed? (yes); (2) Is disclosure required in order to serve a **compelling** state interest? (no); (3) If so, will the

disclosure occur in the manner that is least intrusive with respect to the right of confidentiality? (no), militates in favor of rejection of the request as presently constituted.

Response: The request as presently constituted should be held to be improper. The plaintiff will be happy to provide photographs related to the claims and defenses of the instant action. The following such photographs are attached: [list]

## H. EMPLOYMENT, INCOME AND ECONOMIC DAMAGES

### 1. Employment files

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts, injuries and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo.1999).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

### 2. Tax returns

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- It seeks privileged materials.

- It seeks personal and confidential materials. Congress has mandated that federal income tax returns be treated as confidential communications between a taxpayer and the government. I.R.C. section 6103. See *Payne v. Howard*, 75 F.R.D. 465,469 (D.D.C.1977); *Federal Sav. & Loan Ins. Corp. v. Krueger*, 55 F.R.D. 512, 514(N.D.111.1972). "[Public] policy favors the nondisclosure of income tax returns." *Cooper v. Hallgarten & Co.*, F.R.D. 482, 483 (S.D.N.Y.1964). In *Payne* the court stated: The reason for this protection is straightforward. Unless taxpayers are assured that the personal information in their tax returns will be kept confidential, they likely will be discouraged from reporting all of their taxable income to the detriment of the government. The opposite is also true. Unless confidentiality is guaranteed, taxpayers will likely refrain from using all of the tax-saving measures to which they are lawfully entitled. *Payne*, 45 F.R.D. at 469. Similarly, in *Krueger*, 55 F.R.D. at 514, the court noted that the policy is "grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue." Implicit in the policy behind I.R.C. section 6103 and the authorities cited is the understanding that the crux of the issue is not merely tax revenue, but the "personal information contained in [the] tax returns..." *Krueger*, 55F.R.D. at 514, note 8. The party requesting the tax information must show a compelling need for the tax returns. *Losavio v. Robb*, 579 P.2d 1152, 1157 (Colo.1978); *Griffin v. Western Realty Sales Corp.*, 665 P.2d 1031, 1034 (Colo.App.1983). See also *Biliske v. American Live Stock, Inc.*, 73 F.R.D. 124, 126, note 1 (W.D. Okla.): the public policy against unnecessary disclosure of tax returns indicates that a court

should not require the production of tax returns where the information sought is obtainable by other means or from other sources. Finally, the Defendants have not shown a “compelling need” for the Plaintiff’s tax returns as required by *Alcon v. Spicer*, 113 P.3d 735 (Colo.2005).

### 3. Pay stubs, check books, bank statements, etc.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- It seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson’s, Inc.*, 975 P.2d 718 (Colo.1999).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

Response: (a) Documents responsive to this request were provided in the plaintiff’s initial disclosures; or, (b) documents responsive to this request are provided herewith; or, (c) There are no documents responsive to this request.

### 4. Profit and loss statements, income statements, balance sheets, etc.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action.
- It seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v.*

*Albertson’s, Inc.*, 975 P.2d 718 (Colo.1999).

- It seeks materials that are not in the possession, custody or control of the plaintiff.
- To the extent that it seeks privileged materials such as consulting expert materials or work product.

Response: (a) Documents responsive to this request were provided in the plaintiff’s initial disclosures; or, (b) documents responsive to this request are provided herewith; or, (c) There are no documents responsive to this request.

## I. OTHER DAMAGES

### 1. Vehicle damage estimates and repair bills

Objection. The plaintiff objects to this request to the extent that it seeks privileged materials such as consulting expert materials or work product.

Response: (a) Documents responsive to this request were provided in the plaintiff’s initial disclosures; or, (b) documents responsive to this request are provided herewith; or (c) There are no documents responsive to this request.

## J. EXPERTS

### 1. The entire files of plaintiff’s treating medical providers.

Objection: The plaintiff objects to this request on the following grounds:

- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. First, the plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*,

109 P.3d 127 (Colo.2005). Second, it seeks privileged materials that may be in the possession of consulting experts.

- It seeks materials that are not in the possession, custody or control of the plaintiff.
- The plaintiff is required to produce the complete files of experts specially retained to testify at trial; however, the plaintiff is not required to produce the complete files of experts who have not been specially retained to testify at trial; e.g., treating physicians. *Gall v. Jamison*, 44 P.3d 233 (Colo.2002).

Response: Copies of relevant, non-privileged medical records were provided in the plaintiff’s initial disclosures (or, copies of relevant, non-privileged medical records are provided herewith).

### 2. The entire files of experts specially retained to testify at trial.

Objection: The plaintiff objects to this request on the following grounds:

- It is premature – as no experts have yet been retained.
- It seeks to vary the procedures and timing of expert disclosures pursuant to the Colorado Rules of Civil Procedure.

Response: The plaintiff’s expert’s materials will be disclosed in conformity with Rule 26 or court order.

## K. CATCH-ALL REQUESTS

### 1. Any and all documents referenced in disclosures, answers to interrogatories, and responses to requests for production.

Objection: The plaintiff objects to this request on the following grounds:

- The request is not stated with reasonable particularity as required by C.R.C.P. 34.
- It is overbroad and unduly burdensome.



- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo.1999).
- It seeks materials that are not in the possession, custody or control of the plaintiff.

## 2. Any and all documents regarding the subject matter of this action which have not been produced in response to any other request.

Objection: The plaintiff objects to this request on the following grounds:

- The request is not stated with reasonable particularity as required by C.R.C.P. 34.
- It is overbroad and unduly burdensome.
- It seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.
- It seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- It seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718

(Colo.1999).

- It seeks materials that are not in the possession, custody or control of the plaintiff.

## L. RELEASE AUTHORIZATIONS

### 1. Signed release authorizations.

Objection: The plaintiff objects to this request on the following grounds:

- Rule 34 does not require the creation of documents that do not exist – only the production of documents that already exist. Because no signed release authorizations exist, there are no documents responsive to this request.
- Neither Rule 34 nor any other rule requires that the plaintiff provide signed release authorizations to the defendant.
- Rule 45 provides the mechanism of the defendant to obtain medical records and documents that are in the possession of third parties.
- Plaintiffs cannot be compelled to provide medical release authorizations to defendants. *Neal v. Boulder*, 142 F.R.D. 325 (D. Colo. 1992); *Clark v. Vega Wholesale*, 181 F.R.D. 470 (D.Nev.1998); *Greene v. Sears Roebuck*, 40 F.R.D. 14 (N.D.Ohio1966).
- It is an abuse of discretion for a trial court to order the plaintiff to provide unlimited, blanket release authorizations to the defendant. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).
- The request is overbroad and unduly burdensome.

The request seeks materials that are not relevant to any claim or defense in this action. Medical care as to body parts and conditions not at issue in this case are not relevant and therefore are not discoverable.

- The request seeks privileged materials. The plaintiff has not waived the physician/patient privilege as to body parts and conditions not at

issue. *Weil v. Dillon Companies*, 109 P.3d 127 (Colo.2005).

- The request seeks personal and confidential materials that are qualifiedly privileged pursuant to *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo.1999).
- The request seeks materials that are not in the possession, custody or control of the plaintiff.

Optional Response: The following limited release authorizations are attached: [attach signed release authorizations with tailored limitations; e.g., by provider; by date; by facility; by specific body parts; by injuries or conditions at issue, etc.]. The provision of the attached signed release authorizations is conditional upon the defendant's compliance with the following conditions: (1) Photocopies of the release authorizations are not valid; only originals may be used; (2) The release authorizations are valid for one release of records to the requester; (3) The release authorizations do not authorize communications – just the release of records; (4) Records received pursuant to the release authorizations will not be provided to any external databases such as claims bureaus; (5) Records received pursuant to the release authorizations shall be used only for investigation and defense of the plaintiff's claim and for no other purpose; (6) Records received pursuant to the release authorizations shall not be provided to persons not involved in the investigation and defense of the plaintiff's claim; (7) The use of the plaintiff's records for a purpose other than for the investigation and defense of the plaintiff's claim will be considered a violation of C.R.S. §18-4-412, a violation of HIPAA privacy regulations, and an invasion of the privacy of the plaintiff; (8) if the requester receives medical records not specifically authorized to be released, then the unauthorized records are inadvertently released privileged materials subject to C.B.A. Ethics Opinion 108; (9) copies of all materials

received pursuant to the release authorizations will be provided to plaintiff's counsel within 10 days of receipt by defendant's counsel.

## Conclusion

These objections are not meant to be "standard" - as there can be no standard objections because there are no standard requests for production. Each request must be examined on its own merits and each objection, if any, must be tailored to that unique request. Sometimes there will be on objection at all. Other times there will be only one or two objections. Do not feel compelled to regurgitate the listed objections. The menu simply sets forth the most likely potential objections. The menu does not, and cannot, set forth case specific details, explanations or qualifications. You will have to do that as necessary or appropriate.

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## Endnotes

- <sup>1</sup> C.R.C.P. 26(b)(1).
- <sup>2</sup> C.R.C.P. 26(b)(5).
- <sup>3</sup> C.R.C.P. 26(c).
- <sup>4</sup> C.R.C.P. 34(b).
- <sup>5</sup> C.R.C.P. 26(b)(1).
- <sup>6</sup> C.R.C.P. 26(b)(1).
- <sup>7</sup> C.R.C.P. 26(b)(1).
- <sup>8</sup> *Martinelli v. District Court*, 612 P.2d 1083 (Colo.1983). See also *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo.1999).
- <sup>9</sup> C.R.C.P. 34(a)(1).
- <sup>10</sup> C.R.C.P. 16 and 26 set forth the proce-

dures and timelines for discovery. There does not appear to be a "premature" objection specifically stated in the Colorado Rules of Civil Procedure; however, objections that the request is premature are generally upheld by trial courts when: (a) the request seeks to vary the procedures and timelines of Rules 16 or 26 or the Case Management Order; or (b) common sense and practicality dictates that the response to the request be delayed until after the occurrence of some event or the passage of time. Although not technically within the prerequisites for a protective order

(annoyance, embarrassment, oppression, or undue burden or expense, many trial courts will order that "the disclosure or discovery may be had only on specified terms and conditions" (e.g., after the occurrence of some event or the passage of time) pursuant to Rule 26(c)(2).

- <sup>11</sup> The rules "speak for themselves" and the Case Management Order cannot be modified without court approval.
- <sup>12</sup> *Blair v. Travelers Ins. Co.*, 9 F.R.D. 99 (W.D.Mo.1949).
- <sup>13</sup> *SEC v. Samuel H. Sloan & Co.*,




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