

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

DEBRA K. NEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-4059-JAR
	)	
CITY OF HOISINGTON, KANSAS, et al.,	)	
	)	
Defendants.	)	

**ORDER**

This matter comes before the court upon defendants’ unopposed motion to for inspection and reproduction of medical records (Doc. 22), seeking an order to permit inspection and reproduction of plaintiff’s medical records in the possession of Clara Barton Hospital and Clara Barton Medical Clinic.

The court has reviewed the instant motion and finds that it is silent with respect to whether any attempt has been made to obtain these records through the use of a subpoena pursuant to Fed. R. Civ. P. 45. Fed. R. Civ. P. 34 provides that “[a] person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45. Fed. R. Civ. P. 45 defines a procedure for the issuance and use of subpoenas to obtain production or permission for an inspection from third parties in possession of information.

The court is not inclined to look with favor upon any motion requesting an order to compel production or permit inspection of items in the possession of a third without a showing that the party seeking such an order has first attempted to obtain the production or inspection through the use of a subpoena pursuant to Fed. R. Civ. P. 45 and been unsuccessful. As such, the court finds that defendants’ motion

does not make a sufficient showing of efforts made to obtain the desired production or inspection through the use of a subpoena and will deny it without prejudice for that reason. As this denial is without prejudice, defendants may, should they find it necessary, file a new motion for inspection and reproduction, providing the court with a showing that they have first sought to obtain the information at issue through the use of a subpoena and that such effort was unsuccessful, and the court will entertain their motion at that time.

**IT IS THEREFORE ORDERED** that defendants' unopposed motion to for inspection and reproduction of medical records (Doc. 22) is hereby denied without prejudice.

**IT IS SO ORDERED.**

Dated this 30th day of December, 2005, at Topeka, Kansas.

s/K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge