

states as follows: “For each plaintiff chiropractor, identify the number of referrals you have received from physicians during each full or partial year from January 1, 1996 through the present.” (Defs.’ Interrog. No. 3).

The defendants contend that this interrogatory should count as one interrogatory for the purposes of the scheduling order. However, the plaintiffs argue that because there were five plaintiff chiropractors in the case at the time that this interrogatory was served and the interrogatory asks each of them to provide a response, this interrogatory actually contains five separate questions.

The scheduling order, which was agreed upon by the parties and entered on September 4, 2001, provides in pertinent part: “The parties (all plaintiffs are deemed to be one party, all defendants are deemed to be one party) may serve 25 interrogatories, including discrete subparts, pursuant to Rule 33 Fed. R. Civ. P. . . .”

The court previously ruled on an earlier Motion to Compel by the plaintiffs concerning the counting of interrogatories with discrete subparts. *See Am. Chiropractic Assoc. v. Trigon Healthcare, Inc.*, No. 1:00CV00113, 2002 WL 534459 (W.D. Va. Mar. 18, 2002). In that opinion, I examined two divergent methods of counting interrogatories and concluded that even under the more lenient standard, the plaintiffs had exceeded their limit. *See id.* at *3. That lenient standard provides that the court should determine whether “a subpart is logically or factually subsumed within

and necessarily related to the primary question.” *Kendall v. GES Exposition Servs.*, 174 F.R.D. 684, 685 (D.Nev.1997) (quoting *Ginn v. Gemini, Inc.*, 137 F.R.D. 320, 322 (D.Nev.1991)). *Contra Valdez v. Ford Motor Co.*, 134 F.R.D. 296, 298 (D.Nev.1991) (holding that each subpart is a separate interrogatory).

The plaintiffs contend that under the *Kendall* test, asking each named chiropractor to respond to the same question amounts to five discrete subparts. Following that rationale, the plaintiffs argue, the defendants’ Interrogatory numbered three should count as five interrogatories.

I disagree. Rule 33 and the cases discussed in my previous opinion pertain to the subject matter of the interrogatories and not to the number of parties required to answer them. *See Am. Chiropractic Assoc.*, 2002 WL 534459, at *3; *Kendall*, 174 F.R.D. at 685; *Valdez*, 134 F.R.D. at 298.

Analyzed under either *Valdez* or *Kendall*, the defendants’ Interrogatory numbered three contains only one subject—the number of referrals that the five chiropractors have received from physicians. This is in contrast to the plaintiffs’ interrogatories that contained several different subjects of inquiry. *See Am. Chiropractic Assoc.*, 2002 WL 534459, at *3. The fact that the defendants’ interrogatory requires answers to the same question from five different plaintiffs has no effect on the subject matter of the interrogatory.

The plaintiffs stress that the reason the parties agreed to limit the number of interrogatories to twenty-five per side, rather than per party as provided in Rule 33, was to ensure fairness. However, the plaintiffs' reading of the scheduling order would cause an inequity in the discovery process. For example, assuming that there were twenty-five plaintiffs in this case, the defendants would be limited to serving one interrogatory per plaintiff, while the plaintiffs could serve five interrogatories per defendant. This result was not intended by the Rules of Civil Procedure nor by the scheduling order. *See Fed. R. Civ. P. 1.*

Therefore, I find that the defendants' Interrogatory numbered three in their Second Set of Interrogatories counts as one interrogatory. Consequently, it is **ORDERED** that the defendants' Motion to Compel [Doc. No. 96] is granted and the plaintiffs are to respond to the Third Set of Interrogatories within twenty days of the date of entry of this opinion and order.

ENTER: August 5, 2002

United States District Judge