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June 15, 2018

By ECF

Hon. Cathy L. Waldor
U.S. District Court for the District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: Conforti v. St. Joseph's Healthcare System, Inc., et al., No. 2:17-cv-00050 (D.N.J.)

Dear Judge Waldor:

We write on behalf of Plaintiff Jionni Conforti, pursuant to Your Honor's guidance during the May 22, 2018 telephonic conference in the above-captioned matter, to seek the Court's resolution of a discovery dispute.¹ Specifically, Mr. Conforti requests that the Court compel Defendants St. Joseph's Healthcare System, Inc. ("SJHS"), St. Joseph's Hospital and Medical Center d/b/a St. Joseph's Regional Medical Center ("SJPMC"), and Father Martin D. Rooney (collectively "Defendants") to search the custodial files of all members of the Caring for the Transgender Patient Sub-Committee (the "Transgender Sub-Committee"), including the eight members identified below, for documents, communications, information, and any other material responsive to Mr. Conforti's discovery requests.

I. Relevant Background of Discovery Dispute

Mr. Conforti, a man who is transgender, alleges that he sought and was denied access to medically-necessary health care treatment, services, and facilities by Defendants in violation of federal and state law on account of his sex and transgender status. *See generally* Dkt. 1 ("Compl."). Mr. Conforti was diagnosed with gender dysphoria in June 2014. *See id.* ¶¶ 3, 55. In May 2015, he consulted with Dr. Brian Day, a surgeon with admitting privileges at SJPMC, who agreed to perform a hysterectomy as part of Mr. Conforti's treatment for gender dysphoria. *See id.* ¶¶ 4, 60. Despite Dr. Day's willingness to perform the surgery and the prior representations of Defendants' staff that Mr. Conforti could undergo the hysterectomy in SJPMC's facilities, on June 16, 2015—

¹ During the May 22, 2018 telephonic conference, the Court gave permission for this and other discovery disputes to be resolved via letter motion upon the consent of the parties. The parties have since consented to the instant discovery dispute being addressed by letter motion, and consent to future discovery disputes being raised by letter motion unless either party objects.

the day the hysterectomy was scheduled—Mr. Conforti was notified that Defendants had refused to allow Dr. Day to perform the surgery at their facilities. *See id.* ¶¶ 4-8. Mr. Conforti commenced this action on January 5, 2017. *See id.* Defendants filed an Answer and now assert twenty (20) affirmative defenses. *See* Dkts. 8, 28.

During discovery, Mr. Conforti learned that a “Caring for the Transgender Patient Sub-Committee” was formed at SJRMC around the same time he was denied his hysterectomy. The earliest mention of the Transgender Sub-Committee in documents produced so far by Defendants is in the minutes of an Ethics Committee meeting dated June 15, 2015, *i.e. one day before* Defendants prevented Mr. Conforti from undergoing his surgery. *See* D000687.² It further indicated that Mr. Conforti’s request was one of the reasons the Transgender Sub-Committee needed to be formed, and that it would consider how the Ethical and Religious Directives (“ERDs”), cited by Defendants in their Fifth and Twelfth Affirmative Defenses, relate to such requests. *Id.*; *see* Dkt. 8 at 12-13.

The Transgender Sub-Committee thereafter continued to meet and discuss issues relating to providing medical service to transgender patients. For instance:

- (1) The Sub-Committee met on January 13, 2016, to develop recommendations on caring for transgender patients. *See* D000705-06.
- (2) The Sub-Committee continued to meet occasionally throughout the year and solicited examples of transgender-related policies from other healthcare systems. D005436.
- (3) Father Rooney provided reports on the activities of the Sub-Committee—which remain largely unknown to Mr. Conforti absent further discovery—to the Ethics Committee. *See, e.g.*, D000709 (minutes dated March 21, 2016); D005354 (minutes dated June 20, 2016).

Upon learning of the existence of the Transgender Sub-Committee, and as early as December 5, 2017, Mr. Conforti asked Defendants to confirm they were searching for and producing documents from its members that are responsive to Mr. Conforti’s discovery requests. Defendants responded that they refused to search for or produce responsive documents for any of the Sub-Committee’s members except for Father Rooney.

In March 2018, Mr. Conforti requested that Defendants search for and produce responsive documents, naming eight specific custodians who appear to be the founding members of the Sub-Committee: (1) Dr. Natalie Bilenki; (2) Shannon Heffernan; (3) Dr. Michael Lamacchia; (4) Dr. Osei K. Owusu; (5) Dr. James Pruden; (6) Dr. Mark Rosenberg; (7) Dr. Alan Sori; and (8) Dr. Carlos Rueda. *See* D000698. Defendants again refused to include any of these individuals among its custodians for searching and producing responsive documents. Mr. Conforti raised this discovery dispute with the Court on May 22, 2018, resulting in the instant motion.

² The documents referenced herein by Bates number, which Defendants designated as “Confidential,” are not attached to this letter motion but can be filed under seal upon request.

II. The Sub-Committee Members Likely Possess Unique and Highly Relevant Information that Would Not Be Unduly Burdensome to Produce

Pursuant to Rule 26, a party may obtain any discovery “that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “[C]ourts have construed this rule liberally, creating a broad vista for discovery.” *EEOC v. Princeton Healthcare Sys.*, 2012 WL 1623870, at *18 (D.N.J. May 9, 2012) (citations and quotation marks omitted). This is because a “[r]eview of all relevant evidence provides each party with a fair opportunity to present an effective case at trial.” *Jones v. DeRosa*, 238 F.R.D. 157, 163 (D.N.J. 2006) (citations and quotation marks omitted). Thus, courts have compelled parties to search the records of custodians who may possess “relevant, noncumulative and unique information relating to this action.” *City of Sterling Heights Gen. Employees’ Ret. Sys. v. Prudential Fin., Inc.*, 2015 WL 5055241, at *3 (D.N.J. Aug. 21, 2015).

These principles support the Court directing Defendants to search for and produce responsive documents from the eight requested custodians, as such discovery is likely relevant to the issues presented and does not present undue burden upon Defendants.

First, the members of the Transgender Sub-Committee likely possess documents and communications relevant to Mr. Conforti’s claims and Defendants’ twenty affirmative defenses. The issue of transgender medical care considered by the Transgender Sub-Committee is at the heart of this action; any policies, communications or other material created by or discussed by the Sub-Committee’s members are undoubtedly pertinent to Mr. Conforti’s claims. Indeed, the Sub-Committee appears to have been formed *as a direct result* of the events underlying this action, including Mr. Conforti’s request for and Defendants’ refusal to schedule the hysterectomy, as well as Defendants’ policies and practices regarding treatment of transgender patients in general. Further, such documents are pertinent to Mr. Conforti’s requested relief, including punitive damages and permanent injunctive relief mandating changes in Defendants’ policies and practices. Moreover, the Sub-Committee was intended to address the issue of Defendants’ ability to treat transgender patients as it relates to the ERDs and Catholic doctrine, which is directly at issue in several of Defendants’ affirmative defenses. *See* D000687. By contrast, Defendants have yet to explain why such documents are not relevant to the issues presented.

Second, discoverable material in the possession of the eight identified members of the Sub-Committee likely is not cumulative of what has already been produced. Little to no information on the activities and communications of Transgender Sub-Committee members has been produced—for example, Defendants have not produced: minutes or agendas from Transgender Sub-Committee meetings; all internal correspondence between members related to transgender healthcare; draft or final versions of any policies or procedures proposed by the Sub-Committee; or discussions regarding any decision to deny Mr. Conforti or other transgender individuals access to healthcare. Thus, any argument that producing material from the Transgender Sub-Committee would be duplicative of the material produced from Father Rooney or other custodians is insufficient. Indeed, the paucity of documents referencing the Transgender Sub-Committee produced to date affirmatively demonstrates the need to search for documents from these additional custodians.

Third, Defendants have not yet offered any particularized showing of undue burden or disproportionality that warrants the wholesale exclusion of these individuals as custodians. In any event, previous document productions from Defendants have been relatively small (approximately 2,500 documents in total), notwithstanding that Defendants include large, sophisticated entities with extensive experience in litigation, and particularly given the seriousness of the issues presented and Defendants' assertion of twenty broad affirmative defenses. Any further purported cost or burden of adding custodians who sat on a Sub-Committee addressing the very issues raised in this action does not outweigh the clear benefits of searching for and producing responsive discovery.

Accordingly, Mr. Conforti respectfully requests that the Court compel Defendants: (1) to include the eight aforementioned members of the Transgender Sub-Committee and any other members of the committee as custodians for the purpose of discovery; and (2) to search for and produce documents responsive to Mr. Conforti's discovery requests from those individuals.

III. Request for Telephonic Oral Argument

To the extent that the Court believes that oral argument would assist it in resolution of this dispute, Mr. Conforti respectfully requests that such oral argument be scheduled to take place telephonically.

Respectfully submitted,

By: /s/ Thomas L. Barnes
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JIONNI CONFORTI,

Plaintiff,

v.

ST. JOSEPH'S HEALTHCARE SYSTEM,
INC.; ST. JOSEPH'S HOSPITAL AND
MEDICAL CENTER D/B/A ST. JOSEPH'S
REGIONAL MEDICAL CENTER; and
FATHER MARTIN D. ROONEY,

Defendants.

Case No. 2:17-cv-00050-JLL-CLW

DECLARATION OF THOMAS L. BARNES

I, Thomas L. Barnes, hereby declare as follows:

1. I am an attorney with the law firm Quinn Emanuel Urquhart & Sullivan LLP, counsel for Plaintiff Jionni Conforti. I am a member in good standing of the Bar of the State of New York, and admitted *pro hac vice* in the above-captioned matter. I make this declaration based on personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein.

2. Pursuant to Local Rule 37.1(b)(1), I submit this declaration in support of Mr. Conforti's letter motion seeking to compel Defendants to search the custodial files of all members of the Caring for the Transgender Patient Sub-Committee (the "Transgender Sub-Committee"), including the eight members identified in Mr. Conforti's letter-motion, for documents, communications, information, and any other material responsive to Mr. Conforti's discovery requests.

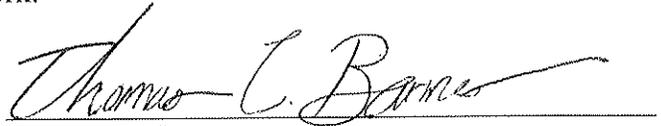
3. On April 10, 2018, Omar Gonzales-Pagan and I, counsel for Mr. Conforti, met and conferred by telephone with Christopher Mayer and Thomas Doherty, counsel for Defendants,

regarding Mr. Conforti's request that Defendants expand their list of custodians to include all members of the Transgender Sub-Committee. Mr. Mayer and Mr. Doherty informed us that they would not agree to include any members of the Transgender Sub-Committee on their list of custodians other than defendant Father Martin Rooney. Accordingly, we did not reach an agreement resolving the dispute raised in this letter motion.

4. During a May 22, 2018 telephonic conference, the parties informed the Court that they had conferred in good faith to reach an agreement on this issue without the intervention of the Court, but were unable to do so. The Court gave permission for Mr. Conforti to seek resolution of this discovery dispute via letter motion upon the consent of the parties.

5. During a telephonic meet and confer on June 5, 2018, the parties consented to the instant discovery dispute being addressed by letter motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of June, 2018, in New York, New York.


Thomas L. Barnes