

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-CCC-CLW

**NOTICE OF MOTION TO QUASH
AND FOR A PROTECTIVE ORDER**

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that Plaintiff Jionni Conforti ("Mr. Conforti"), by and through his counsel Quinn Emanuel Urquhart & Sullivan, LLP and Lambda Legal Defense and Education Fund, Inc., will move before the Honorable Cathy L. Waldor, U.S.M.J. on March 18, 2019, for an Order granting Mr. Conforti's Motion to Quash and for a Protective Order.

In support of this motion, Mr. Conforti will rely on the attached brief. A proposed Order granting the relief requested is submitted herewith.

DATED: February 15, 2019

Respectfully submitted,

By: *s/ Jaclyn M. Palmerson*

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CERTIFICATE OF SERVICE

I, Thomas L. Barnes, hereby certify that, on February 15, 2019, I served true and correct copies of the Motion to Quash and for a Protective Order on the following counsel of record by email:

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**PLAINTIFF'S MOTION (1) TO QUASH SUBPOENAS
AND (2) FOR A PROTECTIVE ORDER**

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Plaintiff Jionni Conforti (“Mr. Conforti”) respectfully submits this Motion: (1) to quash subpoenas for documents and depositions served by Defendants St. Joseph’s Healthcare System, Inc., St. Joseph’s Hospital and Medical Center (d/b/a St. Joseph’s Regional Medical Center) (“St. Joseph’s”), and Father Martin D. Rooney (collectively, “Defendants”) on six of Mr. Conforti’s medical providers; and (2) for a protective order preserving Mr. Conforti’s limited designations of certain medical records containing highly confidential information as ATTORNEYS’ EYES ONLY (“AEO”) and redaction of a particularly sensitive note contained therein.

PRELIMINARY STATEMENT

On January 5, 2017, Mr. Conforti filed this action against Defendants to remedy the discrimination he suffered in June 2015 when he was improperly denied a medically-necessary hysterectomy by Defendants because of his sex, nonconformity with sex stereotypes, and transgender status. In his Complaint, Mr. Conforti alleges Defendants violated Section 1557 of the Patient Protection and Affordable Care Act (“ACA”) and the New Jersey Law Against Discrimination (“NJLAD”) by discriminatorily denying him access to medical treatment, services, and facilities, and requests declaratory and injunctive relief against Defendants, as well as standard compensatory damages for the “garden variety” emotional distress he suffered. Mr. Conforti does not assert any other causes of action, and neither the ACA nor the NJLAD require proof of emotional injury as an element of the claim.

Now, on January 7, 2019—*more than two years after the Complaint was filed* and on the eve of the close of fact discovery¹—Defendants served their very first deposition notices in the case. Notwithstanding the limited nature of Mr. Conforti’s claims and standard damages request, Defendants now seek to blow off the doors to Mr. Conforti’s *entire* personal and medical history

¹ The deadline to complete fact discovery has been repeatedly extended at Defendants’ requests.

by subpoenaing six of Mr. Conforti's doctors and medical professionals for deposition testimony and additional medical records. To be clear, and notwithstanding his objections, Mr. Conforti *already* voluntarily: (1) produced seven-and-a-half years of (irrelevant) medical records from before and after the denial by St. Joseph's; and (2) provided hours of testimony in response to Defendants' litany of invasive questions on the contents of those records during his deposition on January 29, 2019 (which was not officially noticed until January 28, 2019). Nonetheless, Defendants purportedly intend to elicit further sensitive and private information on *any and all* topics Mr. Conforti has confidentially discussed with his doctors and medical professionals, irrespective of whether these are mental health care providers, surgeons, or general practitioners, on the pretext that Mr. Conforti's standard request for "garden variety" compensatory damages invites an unmitigated invasion into Mr. Conforti's privacy.

Defendants' sudden interest in Mr. Conforti and his medical needs comes nearly four years too late. Prior to the decision to deny Mr. Conforti access to medical care, Defendants *never* consulted with Mr. Conforti's doctors, *never* requested these confidential medical records, and *never* questioned Mr. Conforti's bona fide diagnosis of gender dysphoria—in fact, they never requested to even speak to Mr. Conforti before the decision was made to close the hospital doors on him. Defendants' only professed contemporary justification for their discrimination was that "as a Catholic Hospital we would not be able to allow your surgeon to schedule this surgery here at St. Joseph's." This undisputed fact is all that is needed to decide this case. Defendants therefore have no valid reason to force half a dozen medical professionals to divulge highly sensitive information confidentially disclosed by their patient while seeking medical treatment, inflicting damage to the sacred doctor-patient and psychotherapist-patient relationship and Mr. Conforti's ability to candidly seek medical treatment. Moreover, on their face, Defendants' subpoenas are

highly invasive, prejudicial, unduly burdensome, and unreasonable. In sum, Defendants' requests are outside of the scope of discovery needed to try this case. Mr. Conforti therefore requests that the Court quash the six subpoenas pursuant to Federal Rules of Civil Procedure 26 and 45.

Separately, in his voluntary production of his medical records, Mr. Conforti designated certain limited portions as AEO under Paragraph 2 of the Discovery Confidentiality Order entered by the Court ("DCO"), (Dkt. 21 at 2), which applies to "any information, document, or thing, or portion of any document or thing, that contains or discloses highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm." Mr. Conforti judiciously applied this designation to just 18 of the 346 pages of medical records that he produced from his health care providers, each of which "contains or discloses highly sensitive . . . personal information." Mr. Conforti also redacted one isolated line on a single medical record that contains particularly sensitive information from decades ago and has no bearing on this case. Nonetheless, at the last minute, Defendants have demanded the removal of *all* such designations from Mr. Conforti's medical records so that Defendants may freely disclose any highly sensitive information contained therein to *other* individuals beyond the medical providers who prepared those records. Mr. Conforti therefore requests the Court enter a protective order preserving his designations and limited redaction pursuant to Paragraph 8(b) of the DCO.

Mr. Conforti, like the vast majority of civil litigants, brings only a standard, garden variety mental distress damages request as one form of relief he seeks as compensation for Defendants' acts of discrimination. Mr. Conforti did not automatically waive all expectations of privacy and open the door into invasive inquiry into his most confidential and sensitive medical records by doing so. Defendants' requests to engage in invasive and irrelevant questioning of his medical providers, and to disclose his most sensitive information to others, should be denied.

FACTUAL BACKGROUND

A. The Underlying Dispute

In 2014, Mr. Conforti was diagnosed with gender dysphoria by Dr. Ian Tang and his team of medical professionals at Apicha Community Health Center. (*See* Compl. ¶¶ 3, 55). Mr. Conforti subsequently began treatment for gender dysphoria, which included receiving hormone therapy and undergoing a double mastectomy from Dr. Peter Raphael. (*Id.* ¶¶ 4, 55-56). While Mr. Conforti had struggled with depression growing up, he did not realize until later that gender dysphoria was a cause. (*Id.* ¶¶ 51-54). In 2015, in consultation with and at the recommendation of his medical providers, Mr. Conforti took the next steps to undergo a hysterectomy as part of his medically necessary treatment for gender dysphoria. (*Id.* ¶¶ 4, 57). Ultimately, Mr. Conforti consulted with Dr. Brian Day, an experienced surgeon at Totowa OB/GYN who had been referred to Mr. Conforti and who had admitting privileges at St. Joseph's, Mr. Conforti's lifelong hospital of choice. (*Id.* ¶¶ 4-5, 49-50, 58-59, 76).

In May 2015, Mr. Conforti e-mailed Dr. Day's office to inquire whether Dr. Day could perform Mr. Conforti's hysterectomy as treatment for his gender dysphoria, to which Dr. Day responded that he would be "happy" to help. (*Id.* ¶ 60). Mr. Conforti further obtained two referral letters from his medical providers recommending a total hysterectomy as medically necessary for his diagnosed condition, as required by his insurer. (*Id.* ¶¶ 61-63). Mr. Conforti then e-mailed with Dr. Day further and scheduled an appointment at Dr. Day's office for June 16, 2015. (*Id.* ¶ 64). On June 8, 2015, Mr. Conforti went in person to St. Joseph's in Wayne and confirmed with the "head nurse of surgery" that there would be no issues with Mr. Conforti undergoing a hysterectomy at St. Joseph's for the treatment of gender dysphoria. (*Id.* ¶ 65). This was consistent with St. Joseph's "Patient Bill of Rights," which requires that all patients are entitled to "Legal

Rights,” including “treatment and medical services without discrimination based on ... sex ... [and] gender identity or expression.” (*Id.* ¶ 47).

However, on June 16, 2015, the day of Mr. Conforti’s appointment with Dr. Day, Defendant Father Martin Rooney, Director of Mission Services at SJRMC, e-mailed Mr. Conforti for the first time to inform him that, “as a Catholic Hospital we would not be able to allow your surgeon to schedule” “a total hysterectomy . . . to remove all female parts based on the medical necessity for Gender Reassignment.” (*Id.* ¶¶ 8, 69). Because Dr. Day only had admitting privileges at St. Joseph’s, he was unable to perform the hysterectomy at all. (*Id.* ¶ 68). As a result of this blatant discrimination, Mr. Conforti felt frustrated, humiliated, depressed, and anxious, particularly at having to once again search for a surgeon he could trust to perform this highly sensitive surgical procedure. (*Id.* ¶¶ 9, 73-74). He was further afraid of being discriminated against by St. Joseph’s again if he returned. (*Id.* ¶ 75). In September 2015, Mr. Conforti was able to undergo a hysterectomy at another hospital with a different surgeon, Dr. Charles Haddad.

B. The Instant Dispute

On January 5, 2017, Mr. Conforti filed the instant Complaint alleging discrimination in violation of the ACA and the NJLAD. On April 10, 2018, the parties held a meet-and-confer on various discovery issues, including Mr. Conforti’s objections to Defendants’ broad and irrelevant discovery requests for Mr. Conforti’s medical records. To avoid unnecessary motion practice, Mr. Conforti agreed to produce medical records from six of his medical providers dating from January 1, 2011 to August 7, 2017 (the date of Defendants’ discovery requests), while preserving his objections. During a subsequent meet-and-confer, Mr. Conforti agreed to expand the date range to August 23, 2018, over *20 months after* the Complaint was filed. By October 2018, Mr. Conforti produced 346 pages of medical records, of which he designated just 18 pages (less than 1%) as

“AEO.”² Mr. Conforti also produced one record with a line redacted, as it contains a particularly sensitive note from *decades* ago, and is thus outdated, irrelevant, inflammatory, prejudicial, and would disproportionately harm Mr. Conforti without offering any concomitant benefit.³

On January 7, 2019—more than two years after filing the Complaint and when fact discovery was scheduled to close in just three weeks—Defendants issued six subpoenas (the “Subpoenas”), attached hereto as Exhibit A, of Mr. Conforti’s current and prior medical providers for depositions:

- Dr. Joseph Vitale, one of Mr. Conforti’s primary healthcare providers;
- Mary Vitale, another one of Mr. Conforti’s primary healthcare providers;
- Rissy Batista, Mr. Conforti’s former therapist;
- Dr. Charles Haddad, the surgeon who performed Mr. Conforti’s hysterectomy after Defendants refused to allow it;
- Vincent Fitzgerald, Mr. Conforti’s current therapist; and
- Dr. Ian Tang, the doctor who provided transition-related medical care to Mr. Conforti.

Each Subpoena also seeks the following documents to supplement the documents Mr. Conforti already provided from these providers:

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

² The challenged documents, attached hereto as Exhibit B, are: Tang 006, 035, 038, 044, 050, 058, 061, 066, 068, and 071; Fitzgerald014, 016, 059, and 061; and Batista039, 045, 054, and 072.

³ That line is on Fitzgerald016 and 061. To the extent that the Court entertains any doubts, Mr. Conforti is willing to disclose this information solely to the Court for its own *in camera* review.

Two days later, on January 9, 2019, counsel for Defendants wrote to counsel for Mr. Conforti requesting that: (1) all 18 pages from his produced medical reports that were designated AEO be de-designated entirely or, in the alternative, that any such designated materials could be shown to and shared across *all six* medical providers as well as Defendants' unidentified consulting expert; and (2) that the record containing the redacted line be produced in unredacted form.

On January 18, 2019, the parties filed a joint letter addressing their disagreements on the above issues. (Dkts. 62-63). This Court directed the parties "to file formal motions to compel, quash or for a protective order" to address the identified issues. (Dkt. 64). This Motion followed.

LEGAL STANDARD

A. Quashing Subpoenas

"A Rule 45 subpoena served in conjunction with discovery must fall within the scope of proper discovery under Fed. R. Civ. P. 26(b)(1)." *Schmulovich v. 1161 Rt. 9 LLC*, 2007 WL 2362598, at *2 (D.N.J. Aug. 15, 2007). "If a subpoena falls outside the scope of permissible discovery, the Court has authority to Quash or modify it upon a timely motion by the party served." *Id.* The Court "must quash or modify a subpoena that . . . requires disclosure of privileged or other protected matter" or "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iii), (iv).

Rule 26(b)(1) further limits the scope of discovery to "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." *Id.* 26(b)(1). The Court should consider such factors as "the importance of the issues at stake in the action," "the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit," among other considerations. *Id.*

B. Protective Orders

"A party . . . may move for a protective order," and "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden

or expense.” *Id.* 26(c)(1). Among the actions the Court may take are “forbidding the disclosure or discovery,” “forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters” and “requiring that a deposition be sealed and opened only on court order,” *id.* 26(c)(1)(A), (D), (F).

ARGUMENT

I. The Court Should Quash The Subpoenas, Which Seek Irrelevant, Privileged Testimony, Are Unduly Burdensome, And Highly Invasive

“In evaluating a motion to quash a subpoena, courts examine [1] whether the moving party has standing to bring the motion, [2] the relevancy of the production sought, [3] whether any privilege or protection applies to the production, and [4] whether the subpoena unduly burdens the party sought to be deposed.” *US EEOC v. United Galaxy*, 2011 WL 4072039, at *1 (D.N.J. Sept. 13, 2011) (Waldor, J.). Mr. Conforti addresses these factors in turn.

A. Mr. Conforti Has Standing To Quash The Subpoenas

“[A] party to the action will have standing to quash or modify a non-party subpoena when [the party] claims a privilege or privacy interest in the information sought from the non-party.” *Schmulovich*, 2007 WL 2362598, at *2; *accord United Galaxy*, 2011 WL 4072039, at *2. The Subpoenas unquestionably directly implicate and violate Mr. Conforti’s personal privacy interests in his own medical and mental health treatment and history, as well as his physician- and psychotherapist-patient privileges with his doctors and medical professionals, each of which independently provide standing.

B. The Testimony And Documents Sought In the Subpoenas Are Irrelevant

“[T]he psychological history of the plaintiff is governed by Rule 26(b)” *Bowen v. Parking Auth. of the City of Camden*, 214 F.R.D 188, 195 (D.N.J. 2003). Rule 26(b)(1) states, in pertinent part:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Here, Defendants expansively seek testimony and documentation from a variety of Mr. Conforti's medical providers, including his therapists, surgeons, and primary care physicians. The "importance of the [requested] discovery in resolving the issue[s]," Fed. R. Civ. P. 26(b)(1), in this case is minimal to completely nonexistent. Defendants do *not* contest Mr. Conforti's gender dysphoria diagnosis, *see* Dkt. 8 (Answer) at 11-15, and do *not* claim that information provided by Mr. Conforti's medical providers was sought or considered prior to Defendants' decision to deny Mr. Conforti access to medical care. *See Caver v. City of Trenton*, 192 F.R.D. 154, 163-64 (D.N.J. 2000) (stating that psychological records of police officers had "no bearing on the issue of disparate treatment," as the police department did "not ever see or have access to the underlying records" and "could not have used the records as a basis" for disparate treatment). Any further inquiry into Mr. Conforti's medical and mental health history or treatment will not help prove or disprove Mr. Conforti's allegations or Defendants' numerous affirmative defenses on religious and statutory grounds, nor will such information help the Court in resolving the issues in this case. Moreover, Mr. Conforti has already produced over *seven years'* worth of his medical records, and Mr. Conforti was deposed in detail on those records. Defendants have identified no reason why they need additional records even further removed from the date of the denial, or invasive testimony from the medical providers themselves.

To be sure, one of the forms of relief Mr. Conforti seeks is compensatory damages for the emotional distress he suffered from Defendants' acts of discrimination; however, he does not allege any particularized or specific emotional distress that would allow for such broad discovery.

Mr. Conforti's emotional distress allegations amount to what courts recognize as a "garden variety" claim.⁴ "Garden-variety emotional distress has been described by one court as 'ordinary or common place emotional distress,' which is 'simple or usual.'" *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594, 607 (D. Nev. 2016) (quoting *Fitzgerald v. Cassil*, 216 F.R.D. 632, 637 (N.D. Cal. 2003)). Mr. Conforti "has not waived h[is] right of privacy by asserting . . . a garden-variety claim of emotional distress." *EEOC v. Serramonte*, 237 F.R.D. 220, 224 (N.D. Cal. 2006). "[A] party does not put his or her emotional condition in issue by merely seeking incidental, 'garden-variety,' emotional distress damages, without more." *Ruhlmann v. Ulster Cty. Dep't of Soc. Servs.*, 194 F.R.D. 445, 450 (N.D.N.Y. 2000). Mr. Conforti's claims are entirely consistent with this long-standing authority.

First, Mr. Conforti certainly has not placed his physical medical condition at issue so as to waive his right to privacy as to his purely medical records. *See EEOC v. Peters' Bakery*, 301 F.R.D. 482, 487 (N.D. Cal. 2014) ("Plaintiff has not placed her physical medical condition at issue so as to effect a waiver of her right to privacy."). The sheer breadth of Defendants' requests, seeking to depose Mr. Conforti's general practitioners (Dr. Vitale, Ms. Vitale, and Dr. Tang) and a surgeon completely unrelated to Defendants' discriminatory acts (Dr. Haddad), alone should give the Court pause. These are not mental health professionals, and to the extent Defendants are entitled to any discovery into Mr. Conforti's mental health based on his request for compensatory damages (and they are not), there certainly is no basis to seek such information from these four

⁴ The label "garden variety" does not suggest that the emotional distress suffered by Mr. Conforti is not real, but rather describes the kind of damages that "'naturally flow from the defendants' alleged misconduct,' which is to say injuries which the average or ordinary person might be expected to suffer as a result of defendants' conduct." *Kubik v. Cent. Mich. Univ. Bd. of Trs.*, 2016 WL 9631633, at *4 (E.D. Mich. Mar. 17, 2016) (quoting *Awalt v. Marketti*, 287 F.R.D. 409, 418 (N.D. Ill. 2012)).

individuals. The Court should not permit such unlimited and unnecessary intrusion into Mr. Conforti's medical privacy. *See id.* (“[I]n this case, the Court is concerned with the breadth of Defendant's subpoena in light of the claims at issue . . .”).

Second, any further inquiry into Mr. Conforti's mental health history likewise is unnecessary, irrelevant, and invasive. Mr. Conforti has been clear that he is limiting his claim of compensatory damages to “garden variety” emotional distress. As the Third Circuit has held, “[t]he general consensus is that ‘garden variety’ emotional distress allegations that are part and parcel of the plaintiff's underlying claim’ **are insufficient to place the plaintiff's mental condition in controversy.**” *Kuminka v. Atlantic County New Jersey*, 551 F. App'x 27, 29 (3d Cir. 2014) (emphasis added) (quoting *Bowen*, 214 F.R.D. at 193). Although the *Kuminka* court was addressing Rule 35, “if anything, delving into a plaintiff's medical or psychiatric records is even more invasive than conducting a medical or psychological examination, and . . . the standard for waiver should be at least as rigorous as that” in *Kuminka* in these circumstances. *Serramonte*, 237 F.R.D. at 224.

Mr. Conforti is only claiming emotional distress *intrinsically* arising out of *Defendants'* *own* conduct. This is precisely the circumstance in which courts protect doctor-patient privacy and disallow the exact invasive discovery Defendants seek. *See, e.g., Peters' Bakery*, 301 F.R.D. at 486 (finding no waiver where “Plaintiff has not asserted a claim for intentional infliction of emotional distress or any such claim for unusual or special damages”); *Santelli v. Electro-Motive*, 188 F.R.D. 306, 309 (N.D. Ill. 1999) (finding no waiver where claim “limited to the negative emotions that [plaintiff] experienced essentially as the intrinsic result of the defendant's alleged conduct”). At base, Mr. Conforti “has not placed his mental condition at issue, and has not waived

the psychotherapist-patient privilege, by seeking emotional distress damages incidental to federal . . . statutory law violations.” *Ruhlmann*, 194 F.R.D. at 451.

Because Mr. Conforti “has elected to pursue ‘garden variety’ emotional damages against Defendants,” “the relevance of th[e] information” Defendants seek by obtaining further documents from and deposing six of his medical and mental health care providers “to the stated claim is *de minimis*.” *Womack v. Wells Fargo Bank, N.A.*, 275 F.R.D. 571, 573 (D. Minn. 2011). This alone should suffice for the Court to quash the Subpoenas.

As a final matter, the documents sought by the Subpoenas are also irrelevant to the claims and defenses. Mr. Conforti already produced medical records from January 1, 2011 to August 7, 2017—more than two years after the discrimination at issue occurred, and more than six months after this lawsuit was filed. Given their cumulative nature, Defendants provide no reason for why even more medical records are even relevant, let alone proportional to the needs of the case.

C. The Requested Discovery Is Protected Under The Psychotherapist-Patient Privilege

Even if the Court considers the information sought relevant, it should still quash the Subpoenas because the information at issue is privileged and not subject to discovery.

As noted above, Mr. Conforti has not placed his physical medical condition so as to waive his right to privacy as to his purely medical records, i.e., the documents and testimony sought from Dr. Vitale, Ms. Vitale, Dr. Tang, and Dr. Haddad. *See Peters’ Bakery*, 301 F.R.D. at 487. This easily defeats any ability to seek documents or deposition testimony from these individuals.

As to Ms. Batista and Dr. Fitzgerald, in addition to the reasons stated above, the requested discovery is protected by Mr. Conforti’s psychotherapist-patient privilege—a privilege that Mr. Conforti has not waived by asserting a claim for “garden variety” emotional distress. “It is axiomatic . . . that communications between a psychotherapist and a patient in the course of

diagnosis or treatment are privileged and therefore protected from compelled disclosure under Federal Rule of Evidence 501.” *Jackson v. Chubb Corp.*, 193 F.R.D. 216, 219 (D.N.J. 2000); *see also id.* (noting that *Jaffee v. Redmond*, 518 U.S. 1 (1996) “expressly recognized a federal privilege for such communications”).

While a plaintiff who directly puts his mental health at issue by bringing a lawsuit may waive the privilege, “where a plaintiff merely alleges ‘garden variety’ emotional distress and neither alleges a separate tort for the distress, any specific psychiatric injury or disorder, or unusually severe distress, *that plaintiff has not placed his/her mental condition at issue to justify a waiver of the psychotherapist-patient privilege.*” *Id.* at 225 n.8 (emphasis added).⁵ In other words, “the majority view is that a plaintiff does not place his mental condition in controversy merely by claiming damages for mental anguish or ‘garden variety’ emotional distress.” *Maysey v. Henkel Corp.*, 2018 WL 314859, at *3 (W.D. Ky. Jan. 5, 2018); *see also Kubik*, 2016 WL 9631633, at *7 (finding where the plaintiff sought only “garden variety damages,” she “has not waived her psychotherapist-patient privilege [and her] medical records are thus not discoverable”); *Roberts*, 312 F.R.D. at 607 (finding no waiver of privilege where the plaintiff alleges “‘garden-

⁵ In *Jackson*, the Court stated it took a “broad view” of the waiver of the psychotherapist-patient privilege. 193 F.R.D. at 224. Under the broad view, “courts have found waiver of the privilege where the plaintiff alleges emotional distress in his/her complaint, thereby placing his/her mental or emotional condition at issue, and seeks monetary damages for the psychological injury.” *Id.* at 220. While *Jackson* explicitly adopted the “broad view,” in application it applied what is known as the “middle,” or “limited,” or “garden variety” approach. While not explicitly addressing a “middle” or “garden variety” approach, *Jackson* has been cited by courts that have considered the broad, middle, and narrow approaches as having settled on the “middle” approach. *See, e.g., Miles v. Century 21 Real Estates LLC*, 2006 WL 2711534, at *5 (E.D. Ark. Sept. 21, 2006) (“In *Jackson* . . . , the district court actually applied the ‘broad view’ of waiver, but in a footnote clarified that ‘where a plaintiff merely alleges “garden variety” emotional distress and neither alleges a separate tort for the distress, any specific psychiatric injury or disorder, or unusually severe distress, that plaintiff has not placed his/her mental condition at issue to justify a waiver of the psychotherapist-patient privilege.’” (quoting *Jackson*, 193 F.R.D. at 225 n.8)); *Cassil*, 216 F.R.D. at 637.

variety’ emotional distress and does not rely on medical records or medical expert testimony for proof at trial”); *Hucko v. City of Oak Forest*, 185 F.R.D. 526, 527 (N.D. Ill. 1999) (no waiver of privilege where plaintiff merely seeks damages for emotional harm resulting from defendants’ misconduct). This makes particular sense in discrimination cases, where potential plaintiffs should not be discouraged from calling out acts of discrimination by fear of being forced to place their entire life’s medical and therapeutic histories into intrusive discovery.

Here, Mr. Conforti’s allegations of emotional distress are “garden variety” allegations, which do not implicate a waiver of the psychotherapist privilege—he requests compensation “for his emotional distress and suffering, embarrassment, humiliation, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life.” In addressing the insufficiency of “garden variety” claims to effect a waiver, *Jackson* analyzed “the analogous context of requiring a plaintiff to undergo a mental examination pursuant to [Rule 35(a), in which] courts have generally found that ‘garden variety’ emotional distress does not satisfy the rule’s requirement that the plaintiff’s mental condition must be ‘in controversy.’” 193 F.R.D. at 225 n.8; *see also Auer v. City of Minot*, 178 F. Supp. 3d 835, 842 (D.N.D. 2016) (“Other courts reach the same point by concluding that a patient’s mental health records are not relevant for garden variety claims of emotional distress by relying all, or in part, upon the threshold for obtaining an adverse medical examination under Fed. R. Civ. P. 35(a) as providing an appropriate analog.” (citing *Jackson*, 193 F.R.D. at 219-28 & n.8)); *Serramonte*, 237 F.R.D. at 224. The factors courts consider include:

- (1) a cause of action for intentional or negligent infliction of emotional distress; (2) an allegation of a specific mental or psychiatric injury or disorder; (3) a claim of unusually severe emotional distress; (4) plaintiff’s offer of expert testimony to support a claim of emotional distress; and/or (5) plaintiff’s concession that his or her mental condition is “in controversy.”

St. John v. Napolitano, 274 F.R.D. 12, 19 (D.D.C. 2011) (quoting *Turner v. Imperial Stores*, 161 F.R.D. 89, 95 (S.D. Cal. 1995)) (stating the factors to “assess whether a party’s mental condition was ‘in controversy’ for the purposes of ordering the party to submit to a mental evaluation pursuant to Rule 35” are “equally applicable for analyzing whether or not an emotional distress claim is ‘garden variety’ in the waiver context as well”).⁶ These factors overlap with those articulated in *Jackson*. See 193 F.R.D. at 225 n.8.

None of these factors support a waiver of the psychotherapist-patient privilege here:

1. **A cause of action for intentional or negligent infliction of emotional distress:** Mr. Conforti asserts only two counts of discrimination, and does not plead a cause of action for intentional or negligent infliction of emotional distress.
2. **An allegation of specific mental or psychiatric injury or disorder:** Mr. Conforti’s allegations of emotional distress are as garden variety as they come, and do not allege any “specific” mental or psychiatric injury or disorder. Rather, he alleges “emotional distress and suffering, embarrassment, humiliation, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life.” (Dkt. 1 at 25). Mr. Conforti’s Rule 26 initial disclosures echo this same injury: “Mr. Conforti claims compensatory damages stemming from emotional distress, humiliation, degradation, embarrassment, emotional pain and anguish, violation of his dignity, and loss of enjoyment of life.”
3. **A claim of unusually severe emotional distress:** Mr. Conforti makes no allegations of “unusually severe” emotional distress that would exceed the distress one would be expected to suffer after Mr. Conforti’s experiences with Defendants.⁷

⁶ Courts in this District have applied the same five factors in reviewing the appropriateness of a Rule 35 mental evaluation. See, e.g., *Montana v. County of Cape May Bd. of Freeholders*, 2013 WL 5724486, at *3 (D.N.J. Oct. 18, 2013).

⁷ Compare *Ferrari v. Ford Motor Co.*, 2014 WL 12550552, at *2 (E.D. Mich. Oct. 27, 2014) (holding the “plaintiff has made no claim of unusually severe emotional distress” when he “allege[d] ‘emotional distress, outrage, and humiliation’”), and *Johnson v. Peake*, 273 F.R.D. 411, 413 (W.D. Tenn. 2009) (finding the plaintiff did not allege unusually severe emotional distress when he sought “recovery for ‘deep pain, humiliation, anxiety, and emotional distress’”), with *Maysey*, 2018 WL 314859, at *3 (finding the plaintiff alleged unusually severe emotional distress when he “allege[d] he ‘sustained a severe traumatic injury when his left arm was torn from his body’ and has ‘sustained extreme physical and emotional pain and suffering’”).

Indeed, in *St. John*, a discrimination action, the plaintiff claimed similar emotional distress injuries, even using the term “severe” to describe the distress, but the court found “no factors

4. **Expert testimony**: Mr. Conforti has not offered expert testimony to support a claim of emotional distress, and has no intention of offering expert testimony on this subject.
5. **"In controversy"**: Mr. Conforti does not concede that his mental condition is "in controversy."

This case is thus highly similar to *Valiavacharska v. Celaya*, 2011 WL 4479341 (N.D. Cal. Sept. 26, 2011), where the court granted a motion to quash, finding only garden variety emotional distress was at issue. *Id.* at *3-4. There, the defendants subpoenaed medical records from the plaintiff's treating psychologist, claiming that the plaintiff's mental health was at issue based on: (1) a reference to PTSD and seeking mental health care in the plaintiff's physical therapy notes; (2) her deposition testimony that she receives treatment for anxiety; and (3) the plaintiff's claims that she experiences nightmares. *Id.* at *3. The Court nonetheless granted the motion to quash, "given [p]laintiff's now unequivocal intent to seek only 'garden variety' emotional distress." *Id.*

D. The Subpoenas Are Unduly Burdensome

Finally, the Court is required to quash a subpoena that "subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv). "A subpoena is considered unduly burdensome when the Court finds that it 'is unreasonable or oppressive.'" *Schmulovich*, 2007 WL 2362598, at *4 (quoting *DIRECTV, Inc. v. Richards*, 2005 WL 1514187, at *1 (D.N.J. June 27, 2005)). "A strict definition does not exist for 'unreasonable or oppressive' requests, rather the Court must decide what meets this criteria on a case by case basis." *Id.* Factors courts utilize to evaluate reasonableness include:

- (1) the party's need for the production;
- (2) the nature and importance of the litigation;
- (3) relevance;
- (4) the breadth of the request for the production;
- (5) the time period covered by the request;
- (6) the particularity with which the documents are described;
- and (7) the burden imposed on the subpoenaed entity.

Id.

showing that the plaintiff has alleged more than 'garden variety' emotional distress of the kind an ordinary person might experience following an episode of discrimination." 274 F.R.D. at 20.

Mr. Conforti need not delve separately into each factor; the Subpoenas facially seek irrelevant, privileged, and unreasonable testimony and documents. Given that Mr. Conforti has already produced hundreds of pages of medical records to Defendants (from January 1, 2011 to August 28, 2018), answered extensive questions on these records at his deposition, and the minimal relevance of the testimony and documents sought, Defendants' "need for production" of even more testimony and material is essentially nonexistent. The testimony and documents sought are also not relevant to the ACA and NJLAD causes of action asserted in this case. Defendants' request for documents is also expansive, seeking all documentation relating to Mr. Conforti, and seeking six unnecessary depositions when Defendants have already obtained sufficiently detailed (albeit irrelevant) documents months ago. Moreover, the burden is significant—it cannot be overlooked that the Subpoenas burden Mr. Conforti's ongoing relationships with his healthcare providers. *See, e.g., Jaffee*, 518 U.S. at 10 (recognizing the "sensitive nature" of therapy and the risk that disclosure of confidential counseling will "cause embarrassment or disgrace . . . [and] impede development of the confidential relationship necessary for successful treatment"); Advisory Committee's Notes to Proposed Rules, 56 F.R.D. 183, 242 (1972) (noting "wide agreement" that "successful psychiatric treatment" is "completely dependent" on a patient's "willingness and ability to talk freely" and requires assurances of confidentiality) (cited in *Jaffee*).

While the "nature and importance of the litigation" at issue cannot be overstated, important litigation like this, which seeks to remedy discrimination on the basis of sex and gender identity, does not open the floodgates for unfettered, unreasonable, and overly burdensome discovery into the claimants' medical and psychological history, especially when it has not been put at issue.

II. A Protective Order Should Be Entered Upholding Mr. Conforti's AEO Designations Of Sensitive Medical Records And Limited Redactions

As noted above, pursuant to an agreement reached by the parties during a meet-and-confer on April 10, 2018, Mr. Conforti produced 346 total pages of medical records and related correspondence to Defendants on July 20, 2018 and October 17, 2018. The vast majority of records were designated as “Confidential” by Mr. Conforti pursuant to Paragraph 1 of the DCO. A narrow subset of medical records were designated as AEO, a higher level of protection which, pursuant to Paragraph 2 of the DCO, applies to “any information, document, or thing, or portion of any document or thing, that contains or discloses highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party.” In addition, on one privileged medical record (Fitzgerald016 and 061), Mr. Conforti redacted one line containing certain information.

A protective order is appropriate upon a showing of good cause to protect the party from embarrassment, oppression, or undue burden. “While Rule 26(c) does not specifically reference privacy rights or other similar rights or interests, the rule implicitly protects such rights and, as such, would be an appropriate vehicle for protecting an individual’s privacy.” *Delanoy v. Township of Ocean*, 2015 WL 3949199, at *7 (D.N.J. June 29, 2015) (citing *Seattle Times Co. v. Rinehart*, 467 U.S. 20, 35 (1984)). In considering whether there is good cause, courts generally “balance the requesting party’s need for information against the injury that might result if uncontrolled disclosure is compelled.” *Id.*

Here, a protective order for Mr. Conforti’s AEO designations and redacted information is warranted. **First**, the few AEO designations given to a small portion of Mr. Conforti’s overall medical records are warranted, as Paragraph 2 of the DCO explicitly permits an AEO designation

for any document “that contains or discloses highly sensitive . . . personal information, the disclosure of which is highly likely to cause significant harm to an individual.” Such is the case with the records here, which contain references to highly confidential discussions between Mr. Conforti and his medical providers on a range of irrelevant topics that would cause significant harm to Mr. Conforti if disclosed by Defendants.⁸

By challenging these AEO designations, Defendants intend to disclose Mr. Conforti’s most sensitive and confidential medical information from one health care provider’s records to other health care providers who could not have considered such records when previously treating and/or diagnosing Mr. Conforti. Disclosing highly personal information that Mr. Conforti never chose to share, merely because he brought unrelated discrimination claims against Defendants, serves only to disproportionately harm Mr. Conforti and his essential rights without offering any valid corresponding benefit. The burden and prejudice is further compounded by the scope of Defendants’ request to de-designate *all* medical records marked AEO, without exception, to use in any of the six proposed depositions. Because the information maintained as AEO is of the highest sensitivity and most personal nature and has nothing to do with the instant dispute, the Court should grant the requested protective order to maintain those AEO designations.⁹

Second, as to the page of Mr. Conforti’s records (Fitzgerald016 and 061) with one line of information redacted, the redacted information is unrelated to the case, involves a particularly sensitive note from decades ago, and is so highly sensitive and personal that it cannot be disclosed. Courts routinely uphold limited redactions of irrelevant or particularly sensitive information from

⁸ Mr. Conforti is willing to agree that, if any of the six depositions are taken (*but see supra* Part D), the pages marked AEO could be used at a deposition only of the individual who prepared them.

⁹ Indeed, even the Local Civil Rules for the District of New Jersey recognize the confidentiality of medical records. *See* Local Civil Rule 5.2 (“[C]aution must be exercised when filing documents that contain . . . [m]edical records, treatment, and diagnoses.”).

documents produced in discovery. *See, e.g., Diak v. Dwyer, Costello & Knox, P.C.*, 33 F.3d 809, 813 (7th Cir. 1994) (affirming denial of motion to compel production of redacted information from tax returns that “was immaterial to the pensions question”); *Bear Creek Cranberry Co. v. Cliffstar Corp.*, 2011 WL 2882078, at *3 (W.D.N.Y. July 15, 2011) (“[C]ourts have found redaction appropriate where the information redacted was not relevant to the issues in the case.” (quoting *Spano v. Boeing Co.*, 2008 WL 1774460, at *2 (S.D. Ill. Apr. 16, 2008))); *Schiller v. City of New York*, 2006 WL 3592547, at *7 (S.D.N.Y. Dec. 7, 2006) (upholding redactions of political discussions and “other courses of action” in meeting minutes for an anti-war organization that were irrelevant to the protest at issue).

Here, Mr. Conforti redacted a single reference to information that is outdated, irrelevant, highly inflammatory, prejudicial, and disproportional, and is well beyond the applicable time scope and subject matters for medical records that Mr. Conforti agreed to produce (subject to his relevance objections). The information further cannot be disclosed without causing substantial harm to Mr. Conforti, a fact further underscored by Defendants’ prolonged, invasive, embarrassing, and inflammatory approach to inquiring about other sensitive and irrelevant notes during Mr. Conforti’s deposition. To the extent the Court entertains any doubts, Mr. Conforti is willing to disclose that information solely to the Court for its own *in camera* review, which will confirm that it should remain redacted.

Third, to the extent that the Court orders that any depositions take place (and they should not), given the nature of the material at issue—Mr. Conforti’s most private and personal physical, medical, and psychotherapy information—Mr. Conforti requests that the Court: (1) “[F]orbid[] inquiry into certain matters,” pursuant to Federal Rule of Civil Procedure 26(c)(1)(D), i.e., anything other than the facts giving rise to this lawsuit, including being forbidden to inquire into

Mr. Conforti's psychological history; and (2) order that the "deposition be sealed and opened only on court order," pursuant to Federal Rule of Civil Procedure 26(c)(1)(F).

CONCLUSION

For the aforementioned reasons, Mr. Conforti respectfully requests the Court:

- (1) Quash the Subpoenas served on Dr. Joseph Vitale; Mary Vitale; Rissy Batista; Dr. Charles Haddad; Vincent Fitzgerald; and Dr. Ian Tang.
- (2) Enter a protective order maintaining Mr. Conforti's AEO designations on the following challenged documents: Tang 006, 035, 038, 044, 050, 058, 061, 066, 068, and 071; Fitzgerald 014, 016, 059, and 061; and Batista 039, 045, 054, and 072;
- (3) Maintain the redactions made by Mr. Conforti on Fitzgerald 016 and 061; and
- (4) In the alternative, and only to the extent that the Court orders any depositions of any of the six medical providers be taken:
 - a. Forbid inquiry into any matters other than the facts giving rise to this lawsuit, including being forbidden to inquire into Mr. Conforti's psychological history; and
 - b. Require the depositions be sealed and opened only on court order.

DATED: February 15, 2019

Respectfully submitted,

By: s/ Jaclyn M. Palmerson
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Attorneys for Plaintiff Jionni Conforti

EXHIBIT A

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(973) 622-4444
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
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-CCC-CLW

DEFENDANTS' NOTICE OF SUBPOENAS

TO:

Tom Barnes, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010-1601

Omar Gonzalez-Pagan, Esq.
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street, 19th Floor
New York, New York 10005

Attorneys for Plaintiff Jionni Conforti

COUNSEL:

PLEASE TAKE NOTICE that Defendants St. Joseph's Healthcare System, Inc., St.

Joseph's Hospital and Medical Center, and Father Martin D. Rooney will serve the Subpoenas

attached hereto as Exhibits 1-6.

McCARTER & ENGLISH, LLP
Attorneys for Defendants

By: /s/ Christopher S. Mayer
Christopher S. Mayer

Dated: January 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of Defendants' Notice of Subpoenas on the following via electronic mail:

Tom Barnes, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010-1601

Omar Gonzalez-Pagan, Esq.
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street, 19th Floor
New York, New York 10005

Attorneys for Plaintiff Jionni Conforti

/s/ Christopher S. Mayer

Christopher S. Mayer

Dated: January 8, 2019

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Dr. Joseph Vitale, 999 McBride Avenue, Woodland Park, NJ 07424

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102) and Date and Time (01/22/2018 10:00 am)

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/07/2019

CLERK OF COURT

OR

/s Christopher S. Mayer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Christopher S. Mayer, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 cmayer@mccarter.com. 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

- (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.*

If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

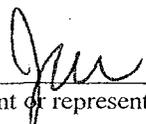
Patient Name Jionni Conforti f/k/a Krystal Conforth	Date of Birth [REDACTED]	Social Security Number [REDACTED]
Patient Address [REDACTED]		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE, MENTAL HEALTH TREATMENT**, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Dr. Joseph Vitale, 999 McBride Avenue, Woodland Park, NJ 07424	
8. Name and address of person(s) or category of person to whom this information will be sent: Christopher Mayer, McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102	
9(a). Specific information to be released: <input checked="" type="checkbox"/> Medical Record from (insert date) January 1, 2011 to (insert date) current <input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes, test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ Include: (Indicate by Initialing) <div style="margin-left: 400px;"> <input checked="" type="checkbox"/> Alcohol/Drug Treatment <input checked="" type="checkbox"/> Mental Health Information <input checked="" type="checkbox"/> HIV-Related Information </div>	
Authorization to Discuss Health Information	
(b) <input type="checkbox"/> By initialing here _____ I authorize _____ <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 20px;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: _____ (Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: Conclusion of Litigation
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Signature of patient or representative authorized by law: 

Date: 8/23/18

* Human Immunodeficiency Virus that causes AIDS.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

)
)
)
)
)
)

Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Mary Vitale, APN, 999 McBride Avenue, Woodland Park, NJ 07424

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102) and Date and Time (01/22/2018 1:00 pm)

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/07/2019

CLERK OF COURT

OR

/s Christopher S. Mayer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Christopher S. Mayer, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 cmayer@mccarter.com, 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

Patient Name Jionni Conforti f/k/a Krystal Conforth	Date of Birth [REDACTED]	Social Security Number [REDACTED]
Patient Address [REDACTED]		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT, and CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Dr. Joseph Vitale, 999 McBride Avenue, Woodland Park, NJ 07424	
8. Name and address of person(s) or category of person to whom this information will be sent: Christopher Mayer, McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102	
9(a). Specific information to be released: <input checked="" type="checkbox"/> Medical Record from (insert date) January 1, 2011 to (insert date) current <input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes, test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ Include: (Indicate by Initialing) <div style="margin-left: 400px;"> <u>JC</u> Alcohol/Drug Treatment <u>JC</u> Mental Health Information <u>JC</u> HIV-Related Information </div>	
Authorization to Discuss Health Information	
(b) <input type="checkbox"/> By initialing here _____ I authorize _____ <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 20px;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: _____ (Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: Conclusion of Litigation
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Signature of patient or representative authorized by law: JJC

Date: 8/23/18

* Human Immunodeficiency Virus that causes AIDS.

AO 88A (Rev 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Rissy Batista, Rissy's Lighthouse Therapeutic Services, 547 Union, Blvd., 2nd Fl., Totowa, NJ 07512

(Name of person to whom this subpoena is directed)

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102	Date and Time: 01/23/2019 10:00 am
--	---------------------------------------

The deposition will be recorded by this method: Stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/08/2019

CLERK OF COURT

OR

/s Thomas F. Doherty

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Thomas F. Doherty, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102
tdoherty@mccarter.com. 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

I. Instructions Regarding “Satisfactory Assurance” under HIPAA

Pursuant to the regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and quoted in relevant part below, you are hereby notified that plaintiff Jionni Conforti, through his counsel of record in this judicial proceeding instituted by Mr. Conforti in the United States District Court for the District of New Jersey, has been provided with notice of this Subpoena with sufficient time to enable plaintiff to object to the disclosure of the requested documents. You are not to produce the subpoenaed evidence prior to January 23, 2019, and you should not produce the subpoenaed evidence on that day if you are notified by that date that plaintiff Conforti has filed objections to this Subpoena, in which case you shall not produce or release the subpoenaed documentation unless and until you are ordered to do so by the Court or the release is consented to by all parties to this action.

See 45 C.F.R. § 164.512, entitled “Uses and disclosures for which an authorization or opportunity to agree or object is not required,” which provides in pertinent part:

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

* * *

(e) Standard: Disclosures for judicial and administrative proceedings –

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

II. Documents Requested

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of August 7, 2017 to the present, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

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Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Dr. Charles Haddad, 1033 U.S. Highway 46 East, Suite 102, Clifton, NJ 07013

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102) and Date and Time (01/24/2018 10:00 am)

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/07/2019

CLERK OF COURT

OR

/s Christopher S. Mayer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Christopher S. Mayer, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 cmayer@mccarter.com. 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

Patient Name Jionni Conforti f/k/a Krystal Conforth	Date of Birth [REDACTED]	Social Security Number [REDACTED]
Patient Address [REDACTED]		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE**, **MENTAL HEALTH TREATMENT**, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Dr. Charles Haddad, 1033 U.S. Highway 46 East, Suite 102, Clifton, NJ 07013	
8. Name and address of person(s) or category of person to whom this information will be sent: Christopher Mayer, McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102	
9(a). Specific information to be released: <input checked="" type="checkbox"/> Medical Record from (insert date) January 1, 2011 to (insert date) current <input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes, test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ <div style="text-align: right;"> Include: (Indicate by Initialing) <u>JL</u> Alcohol/Drug Treatment <u>JL</u> Mental Health Information <u>JL</u> HIV-Related Information </div>	
Authorization to Discuss Health Information (b) <input type="checkbox"/> By initialing here _____ I authorize _____ <div style="display: flex; justify-content: space-around;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: _____ (Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: Conclusion of Litigation
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

 Signature of patient or representative authorized by law.

Date: 8/23/18

* Human Immunodeficiency Virus that causes AIDS.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Vincent Fitzgerald, Nutley Family Services Bureau, 155 Chestnut Street, Nutley, NJ 07110

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (McCarter & English, LLP, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102) and Date and Time (01/25/2019 10:00 am)

The deposition will be recorded by this method: Stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/08/2019

CLERK OF COURT

OR

Is Thomas F. Doherty

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Thomas F. Doherty, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 tdoherty@mccarter.com, 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

Patient Name Jionni Conforti f/k/a Krystal Conforth	Date of Birth [REDACTED]	Social Security Number [REDACTED]
Patient Address [REDACTED]		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT, and CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Vincent Fitzgerald, Nutley Family Services Bureau, 155 Chestnut Street, Nutley, NJ 07110	
8. Name and address of person(s) or category of person to whom this information will be sent: Christopher Mayer, McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102	
9(a). Specific information to be released: <input checked="" type="checkbox"/> Medical Record from (insert date) <u>January 1, 2011</u> to (insert date) <u>current</u> <input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes, test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ Include: (Indicate by Initialing) <div style="margin-left: 400px;"> <u>JC</u> Alcohol/Drug Treatment <u>JC</u> Mental Health Information <u>JC</u> HIV-Related Information </div>	
Authorization to Discuss Health Information	
(b) <input type="checkbox"/> By initialing here _____ I authorize _____ <div style="margin-left: 100px;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: _____ (Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: Conclusion of Litigation
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Jionni Conforti
 Signature of patient or representative authorized by law.

Date: 8/23/18

* Human Immunodeficiency Virus that causes AIDS.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JIONNI CONFORTI

Plaintiff

v.

ST. JOSEPH'S HEALTHCARE SYSTEM, INC., et al.

Defendant

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Civil Action No. 17-0050

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Dr. Ian Tang, Apicha Community Health Center, 400 Broadway, New York, NY 10013

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (McCarter & English, LLP, Worldwide Plaza, 825 Eighth Ave., 31st Fl., NY, NY 10019) and Date and Time (01/28/2019 10:00 am)

The deposition will be recorded by this method: Stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Schedule A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/08/2019

CLERK OF COURT

OR

/s Thomas F. Doherty

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) St. Joseph's Healthcare System, Inc., et al. -- Defendants, who issues or requests this subpoena, are: Thomas F. Doherty, McCarter & English, LLP Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 tdoherty@mccarter.com, 973-622-4444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 17-0050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

All documents relating to your treatment of Jionni Conforti, f/k/a Krystal Conforth, during the period of July 1, 2018 to the present, per the attached authorization, including all clinical records, medical records, psychiatric records, psychotherapy records, patient histories, office/therapy notes, diagnoses, treatment records, surgical records, progress notes, test results, referrals, prescriptions, and records sent to you by other health care providers about Jionni Conforti, f/k/a Krystal Conforth.

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

Patient Name Jionni Conforti f/k/a Krystal Conforth	Date of Birth [REDACTED]	Social Security Number [REDACTED]
Patient Address [REDACTED]		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT, and CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Dr. Ian Tang/Apicha Community Health Center, 400 Broadway, New York, NY 10013	
8. Name and address of person(s) or category of person to whom this information will be sent: Christopher Mayer, McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102	
9(a). Specific information to be released: <input checked="" type="checkbox"/> Medical Record from (insert date) <u>January 1, 2011</u> to (insert date) <u>current</u> <input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes, test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ Include: <i>(Indicate by Initialing)</i> <div style="margin-left: 400px;"> <input checked="" type="checkbox"/> Alcohol/Drug Treatment <input checked="" type="checkbox"/> Mental Health Information <input checked="" type="checkbox"/> HIV-Related Information </div>	
Authorization to Discuss Health Information	
(b) <input type="checkbox"/> By initialing here _____ I authorize _____ <div style="display: flex; justify-content: space-around; width: 100%;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: _____ (Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: Conclusion of Litigation
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Jm
Signature of patient or representative authorized by law.

Date: 8/23/18

* Human Immunodeficiency Virus that causes AIDS.

EXHIBIT B

FILED UNDER SEAL

**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-CCC-CLW

**DECLARATION OF JACLYN M.
PALMERSON IN SUPPORT OF
MOTION TO QUASH AND FOR A
PROTECTIVE ORDER**

I, **JACLYN M. PALMERSON**, of full age, hereby declare as follows:

1. I am an attorney at law of the State of New Jersey and a member in good standing of the bar of this Court. I am an associate of the firm of Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Jionni Conforti ("Mr. Conforti") in the above-captioned matter.
2. I submit this Declaration on behalf of Mr. Conforti in support of Mr. Conforti's Motion to Quash and for a Protective Order.
3. I have personal knowledge of the facts set forth herein or believe such facts to be true based upon information provided by knowledgeable persons.
4. Mr. Conforti's counsel has conferred with the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the Court. Specifically, the parties telephonically met and conferred on these issues on January 11, 2019.
5. Despite these efforts, the parties have been unable to reach an agreement.

6. Mr. Conforti files this motion in accordance with the Court's January 22, 2019 Order, directing the parties "to file formal motions to compel, quash or for a protective order" following the parties' joint January 18, 2019 letter.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of February, 2019, in New York, New York.

/s/ Jaclyn M. Palmerson
Jaclyn M. Palmerson

**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-CCC-CLW

[PROPOSED] ORDER

This matter having been brought before the Court by Plaintiff Jionni Conforti ("Mr. Conforti"), by and through his counsel Quinn Emanuel Urquhart & Sullivan, LLP and Lambda Legal Defense and Education Fund, Inc., for an Order granting Mr. Conforti's Motion to Quash and for a Protective Order, and the Court having considered all arguments and submissions proffered by the parties with respect to this Motion; and having heard the arguments of counsel, if any; and for good cause shown,

IT IS on this _____ day of _____, 2019, hereby

ORDERED that Mr. Conforti's Motion to Quash and for a Protective Order is **GRANTED**; and it is further

ORDERED that third parties Dr. Joseph Vitale, Mary Vitale, Rissy Batista, Dr. Charles Haddad, Vincent Fitzgerald, and Dr. Ian Tang need not respond to the subpoenas absent further Order from this Court; and it is further

ORDERED that the documents designated as "ATTORNEYS' EYES ONLY" by Mr. Conforti shall retain that designation pursuant to the terms of the Discovery Confidentiality Order; and it is further

ORDERED that the redactions made by Mr. Conforti on two documents designated as “ATTORNEYS’ EYES ONLY” shall be maintained; and it is further

ORDERED that documents designated as “ATTORNEYS’ EYES ONLY” shall be used by Defendants solely for the purposes of this litigation, and may be disclosed only to Defendants’ counsel and to such other persons as counsel for Plaintiff agrees in advance or as Ordered by the Court; and it is further

ORDERED that, after the termination of this proceeding, Defendants’ counsel shall return any documents designated as “ATTORNEYS’ EYES ONLY” pursuant to this Order to Plaintiff within thirty (30) days of final resolution; and it is further

ORDERED that the Clerk of the Court shall terminate ECF No. ____.

At Newark, New Jersey

The Honorable Cathy L. Waldor
United States Magistrate Judge