

**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 CONSOLIDATED
MOTION TO FILE UNDER SEAL
AND FOR LEAVE TO FILE OUT OF
TIME**

PLEASE TAKE NOTICE that, as soon as he may be heard, Plaintiff Jionni Conforti ("Mr. Conforti"), by and through his counsel Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), shall move before the Honorable Cathy L. Waldor, of the United States District Court for the District of New Jersey, Martin Luther King, Jr. U.S. Courthouse and Federal Building, 50 Walnut Street, Newark, NJ 07101, for an Order granting Mr. Conforti's consolidated motion permitting the parties to file under seal (i) Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), and (ii) the unredacted version of Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 73), and to publicly file (iii) the proposed redacted version of Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Ex. 1), as well as permitting Plaintiff to file said motion out of time.

PLEASE TAKE FURTHER NOTICE that a proposed Order granting the relief requested is submitted herewith.

DATED: April 3, 2019

Respectfully submitted,

By: *s/ Jaclyn M. Palmerson*

Jaclyn M. Palmerson (N.J. Bar No. 209452016)

Jane M. Byrne (*pro hac vice*)

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CERTIFICATE OF SERVICE

I, Thomas L. Barnes, hereby certify that, on April 3, 2019, I served true and correct copies of the Motion to Seal on the following counsel of record by email:

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/s/ Thomas L. Barnes
Thomas L. Barnes

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**CONSOLIDATED MOTION TO FILE
UNDER SEAL AND FOR LEAVE TO
FILE OUT OF TIME**

Pursuant to Local Civil Rule 5.3, Plaintiff Jionni Conforti ("Mr. Conforti"), by and through his counsel Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), respectfully moves this Court for an order permitting the parties to file under seal the unredacted versions of (i) Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), and (ii) Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 73), and (iii) the public filing of the proposed redacted version of Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Ex. 1). The filings contain highly sensitive personal and medical information in certain pages of Mr. Conforti's medical records and deposition testimony currently designated as "Confidential" or "Attorneys' Eyes Only." Mr. Conforti relies upon the Discovery Confidentiality Order issued by this Court, (Dkt. 21), and his privacy rights and interests as grounds for sealing.

Undersigned counsel has conferred with counsel for Defendants 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 (collectively, "Defendants"), who, without waiver of their objections to Mr. Conforti's "Attorneys' Eyes Only" designations of certain medical records,

(see Dkts. 69 and 70), consent to this motion. The parties have further conferred on the proposed redactions to Defendants' opposition brief, attached hereto as Exhibit 1, and agreed to all but seven of the proposed redactions. Defendants' objections to specific redactions and Mr. Conforti's responses are noted in the index, attached hereto as Exhibit 2.

Further, Plaintiff seeks leave to file the consolidated motion to file under seal, pursuant to Local Civil Rule 5.3(c), one day out of time, on this date, April 3, 2019. Because the parties had not agreed to the redactions by April 2, 2019, the parties agreed to continue working on the redactions and to request a one-day extension. Given the highly sensitive, personal, and medical information sought to be redacted, leave to file the consolidated motion to file under seal, pursuant to Local Civil Rule 5.3(c), one day out of time should be granted. Plaintiff regrets any inconvenience this may have caused.

WHEREFORE, Mr. Conforti respectfully requests that the Court grant this Motion and enter an order (i) permitting the filing under seal of Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), and (ii) permitting the filing under seal of the unredacted version of Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 73), and (iii) permitting the filing of the proposed redacted version of Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Ex. 1), as well as permitting Plaintiff to file said motion out of time.

DATED: April 3, 2019

Respectfully submitted,

By: *s/ Jaclyn M. Palmerson*

Jaclyn M. Palmerson (N.J. Bar No. 209452016)

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Attorneys for Plaintiff Jionni Conforti

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**DECLARATION OF JACLYN M.
PALMERSON IN SUPPORT OF
CONSOLIDATED MOTION TO FILE
UNDER SEAL AND FOR LEAVE TO
FILE OUT OF TIME**

I, **JACLYN M. PALMERSON**, of full age, hereby certify 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 Consolidated Motion to File Under Seal the unredacted versions of Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), and Defendants' opposition to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 73), and to publicly file the proposed redacted version of Defendants' opposition brief, (Ex. 1).

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. In support of the Motion to Seal and in accordance with L. Civ. R. 5.3(c)(3), counsel for Mr. Conforti has prepared a redacted version of Defendants' opposition brief (Ex. 1) and the attached index (Ex. 2) identifying the redacted information Mr. Conforti seeks to seal

and describing with particularity: (a) the nature of the material; (b) the legitimate private or public interest which warrants the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; (d) why a less restrictive alternative to the relief sought is not available; (e) any prior order sealing the same materials in the pending action; and (f) the identity of any party or nonparty known to be objecting to the sealing request. A true and correct copy of the index is attached as Exhibit 2.

5. The two unredacted filings, as discussed in the index, contain, reference, and/or reflect highly sensitive personal and medical information from certain pages of Mr. Conforti's medical records and deposition testimony, which are currently designated as "Confidential" or "Attorneys' Eyes Only."

6. If the unredacted versions of the two filings were to become available to the public, Mr. Conforti would likely suffer significant harm. Public disclosure of the sealed material would disseminate highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.

7. No less restrictive alternative to sealing the unredacted versions of the two filings is available. Mr. Conforti's confidential information must be protected from disclosure in order to keep it confidential. Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), is comprised entirely of Mr. Conforti's highly sensitive medical records, currently designated by Mr. Conforti as "Attorneys' Eyes Only," that he seeks to protect in his Motion to Quash and for a Protective Order. Further, the proposed redactions to Defendants' opposition

brief (Ex. 1) are tailored and limited to the most sensitive information therein, and the unredacted portions sufficiently disclose the nature of the parties' discovery disputes to the public. The limited redactions serve to safeguard Mr. Conforti's rights and legitimate interests in keeping such information private. During the most recent telephonic meet and confer on April 2, 2019, the parties agreed to all but seven of the proposed redactions to Defendants' opposing brief, (Ex. 1), subject to Defendants' objections to Mr. Conforti's "Attorneys' Eyes Only" designations of certain medical records pending before the Court. Defendants' limited objections to the redactions are noted in the index attached hereto. (Ex. 2).

8. On February 4, 2019, the Court granted a motion to seal a pre-motion joint letter filed by Mr. Conforti, which contained the same or similar highly sensitive and personal medical information at issue here. (Dkt. 68).

9. As of the parties' most recent telephonic meet and confer on April 2, 2019, the parties had not agreed to the redactions proposed herein. Accordingly, the parties agreed to continue working on the redactions and to request a one-day extension to file the instant motion.

10. During the most recent telephonic meet and confer on April 2, 2019, counsel for Defendants indicated that, without waiver to Defendants' objections to Mr. Conforti's "Attorneys' Eyes Only" designations of certain medical records pending before the Court, they do not object to the instant request, with the exception of the seven objections to specific redactions noted in the attached index. I am not aware of any other party or nonparty opposing this motion.

11. Accordingly, Mr. Conforti respectfully requests that the Court grant his Consolidated Motion to File Under Seal and For Leave to File Out of Time.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of April, 2019, in New York, New York.

/s/ Jaclyn M. Palmerson
Jaclyn M. Palmerson

**UNITED STATES DISTRICT COURT
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[PROPOSED] ORDER TO SEAL

This matter having been brought before the Court by Plaintiff Jionni Conforti ("Mr. Conforti"), by and through his counsel Quinn Emanuel Urquhart & Sullivan, LLP, on notice to and without objection from counsel to Defendants 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, for an Order granting Mr. Conforti's Consolidated Motion To File Under Seal and For Leave to File Out of Time, which is submitted under N.J. Local Civ. R. 5.3; and the Court having considered the papers submitted by Mr. Conforti in connection with this motion; and having heard the arguments of counsel, if any; and for good cause shown;

The Court makes the following findings of fact and conclusions of law:

1. Motions to seal are governed by Local Civil Rule 5.3(c), which requires the moving party to describe: (a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interest which warrants the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; (d) why a less restrictive alternative to the relief sought is not available;

- (e) any prior order sealing the same materials in the pending action; and (f) the identity of any party or nonparty known to be objecting to the sealing request.
2. On February 15, 2019, counsel for Mr. Conforti filed a Motion to Quash and for a Protective Order, (Dkt. 69), and filed under seal the attached Exhibit B containing Mr. Conforti's highly confidential medical records, (Dkt. 70). On March 4, 2019, Defendants filed an unredacted version of their opposition brief also containing Mr. Conforti's confidential medical information under seal, (Dkt. 63). On March 19, 2019, Mr. Conforti filed a reply, which completed briefing on the motion. (Dkt. 76).
 3. Public disclosure of the sealed information would cause serious injury to Mr. Conforti by revealing to the public confidential and highly sensitive personal and medical information disclosed to Mr. Conforti's medical providers.
 4. The Court finds there is no less restrictive means for shielding this information. Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order, (Dkt. 70), is comprised entirely of Mr. Conforti's highly sensitive medical records. Further, the proposed redactions to Defendants' opposition brief, attached as Exhibit 1 to the Consolidated Motion to Seal, are tailored and limited to the most sensitive information therein, and the unredacted portions provide sufficient information to the public regarding the nature of the parties' discovery disputes. The limited sealed material serve to safeguard Mr. Conforti's rights and legitimate interests in keeping such information private.
 5. On February 4, 2019, the Court granted Mr. Conforti's first motion to seal the parties' joint letter to the Court related the instant discovery dispute. (Dkt. 68).

6. With the exception of Defendants' objections to specific redactions noted in the index, attached as Exhibit 2 to the Consolidated Motion to Seal, the Court is unaware of any party or nonparty objecting to the sealing request.
7. "The Third Circuit has recognized the important privacy interest in one's medical records." *Bertolotti v. AutoZone, Inc.*, 132 F. Supp. 3d 590, 609 (D.N.J. 2015) (citing *Everett v. Nort*, 547 F. App'x 117, 122 n.9 (3d Cir. 2013) (citing *Doe v. Delie*, 257 F.3d 309 (3d Cir. 2001))). The material at issue contains Mr. Conforti's "private health information, which is protected from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA")." *Id.* "Furthermore, public disclosure of an individual's medical history and personal identifying numbers has been held to be a clearly defined and serious injury sufficient to support sealing of medical records." *Id.* (citing *Harris v. Nielsen*, No. 09-cv-2982, 2010 WL 2521434, at *4 (D.N.J. June 15, 2010)).
8. The Court concludes that Mr. Conforti has demonstrated that his application meets the requirements of Local Civil Rule 5.3.

IT IS on this _____ day of April, 2019,

ORDERED, that Plaintiff Jionni Conforti's Consolidated Motion to File Under Seal and For Leave to File Out of Time is granted.

At Newark, New Jersey

Hon. Cathy L. Waldor, U.S.M.J.

EXHIBIT 1

**UNITED STATES DISTRICT COURT
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Defendants.

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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION TO QUASH SUBPOENAS AND FOR A PROTECTIVE ORDER**

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PRELIMINARY STATEMENT

Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc. doing business as St. Joseph's Regional Medical Center ("SJRMC"), and Father Martin D. Rooney submit this Brief in Opposition to Plaintiff Jionni Conforti's ("Plaintiff" or "Conforti") Motion to Quash Subpoenas and for a Protective Order.

Conforti's objections to the depositions of his medical providers are baseless given that Conforti has squarely placed in issue his mental condition and treatment history, both before and then continuing after his request for a sterilization procedure at a Catholic hospital was denied. Put simply, this is the antithesis of a "garden variety" emotional distress case where depositions of a plaintiff's health care providers might be curtailed.

First, Conforti's liability case hinges on his allegation that the hysterectomy he asked Defendants to perform in 2015 was a "medically necessary" treatment for his gender dysphoria, a diagnosable mental health condition according to the DSM-V issued by the American Psychiatric Association. Beyond placing his mental health at issue by virtue of the procedure he claims should have been performed at SJRMC, Conforti affirmatively alleges in his Complaint that he has "long struggled with depression and anxiety rooted in the need to align himself with his true sex" and that he has "received hormone therapy under the direction and supervision of his primary care physician as well as other medical treatment."

Second, after admitting that after he offered no other medical reason for the requested hysterectomy, Plaintiff contends that after he was informed that his requested procedure could not be performed by Defendants to treat gender dysphoria (a decision Defendants were obligated to make under the "Ethical and Religious Directives for Catholic Health Care Services" promulgated by the United States Conference of Catholic Bishops), he became "deeply depressed" and it caused him "great anxiety." Conforti further asserts that he has "suffered

emotional distress, humiliation, embarrassment, and a loss of dignity” as a result of Defendants’ actions. Indeed, the *only compensatory damages sought by Plaintiff in his prayer for relief are for claimed emotional harm*. However, while attempting to recover monetary damages by blaming Defendants for being the cause of his alleged emotional distress, Conforti tries to overlook his concession that he has “long struggled with depression and anxiety” while simultaneously trying to prevent Defendants from questioning his own health care providers about his mental health, including the variety of significant pre-existing stressors that Conforti has indisputably experienced.

As shown below, each of the medical providers who have been noticed for depositions provided treatment to Conforti in relation to one or all of these issues. For these reasons, Defendants respectfully submit that Plaintiff’s Motion to Quash the subpoenas should be denied. In addition, it has recently come to light that there are other medical providers (Dr. Avery Katz and Dr. Diana Vitale) who were not disclosed prior to Plaintiff’s deposition on January 29, 2019, who also treated Plaintiff regarding issues relevant to this lawsuit – [REDACTED] [REDACTED] Defendants should be permitted to obtain records from them and take their depositions as well.

Finally, this Court should deny Conforti’s motion for a protective order relating to his extensive Attorneys’ Eyes Only designations of medical records. Defendants should be permitted to question Conforti’s own health care providers about their treatment of him using his complete medical records. Furthermore, Defendants should be able to show the records to consulting and testifying experts so that Defendants can adequately defend themselves at trial and obtain assistance in seeking to compel a psychiatric examination of Plaintiff.

STATEMENT OF FACTS

A. Plaintiff's Emotional Distress Claim.

In his Complaint, Conforti alleges that he became “deeply depressed” after he was informed on June 16, 2015 that a hysterectomy could not be performed to treat his asserted gender identity disorder at SJRMC, a Catholic hospital. Complaint at ¶9. Conforti further contends that the denial of this surgery caused him “great anxiety,” “emotional distress, humiliation, embarrassment, and a loss of dignity.” *Id.* at ¶¶9-10; see also id. at ¶¶90, 101. While attempting to recover monetary damages from Defendants for alleged emotional distress, Conforti concedes in his Complaint that he has “long struggled with depression and anxiety.” *Id.* at ¶3.

Conforti expanded on these allegations at his recent deposition on January 29, 2019. Conforti testified that [REDACTED]

[REDACTED]

[REDACTED] Plaintiff's Dep. at 162:2-15, attached to Mayer Decl. as Ex. A.

Notably given his opposition to the questioning of his health care providers at subpoenaed depositions, Conforti also testified that he could not quantify his emotional distress damages because he is not an “expert” and he is not qualified to diagnose depression. In addition, Conforti claimed at his deposition that some of his medical records do not accurately portray what was he was feeling after SJRMC informed him of its decision. *Id.* at 256:9-14, 258:12-259:6.

B. Plaintiff's Interrogatory Responses.

Defendants served an initial set of interrogatories on Conforti's counsel on July 5, 2017. Conforti served his responses on August 7, 2017.

In response to an interrogatory asking Conforti to disclose any health providers with whom Plaintiff has treated in relation to his alleged emotional distress, he identified Vincent Fitzgerald at Nutley Family Services and Rissy Batista, LPC. See Plaintiff's Responses to Interrogatories, No. 5, attached to Mayer Decl. as Ex. B.

Conforti disclosed four additional health care providers with whom he had treated since January 1, 2004 for any reason: Dr. Ian Tang of Apicha Community Health Center; Dr. Charles Haddad; Hackensack UMC Mountainside Hospital; and Dr. Brian Day. Id. at No. 6.

C. Defendants' Attempts to Obtain Medical Records.

Defendants served HIPAA releases for Plaintiff's medical and psychotherapy records on July 5, when they propounded the interrogatories and document requests. Plaintiff did not return complete releases with his responses. Although Plaintiff's responses to Defendants' First Request for Production of Document (nos. 15 and 16) stated that Plaintiff would produce documents relating to treatments he sought for gender dysphoria and his diagnosis of gender dysphoria, records from all of the health care providers were not forthcoming. Thus, Defendants wrote to Plaintiff on March 15, 2018 and inquired about the status of the HIPAA releases, stating that, among other things, "Defendants are entitled to discovery into plaintiff's admitted pre-existing history of depression and anxiety, as well as other causes for those conditions such as the side effects of hormone therapy and other health problems he may have faced."

After much back and forth caused by Plaintiff's initial efforts to block any discovery of medical records outside of the hysterectomy itself, Plaintiff agreed on April 10, 2018 to produce signed authorizations for the release of medical and psychotherapy records from Ms. Rissy Batista, Dr. Vincent Fitzgerald, Dr. Ian Tang, Dr. Charles Haddad, Dr. Joseph Vitale, and Dr. Peter Raphael, but limited to the time period of January 1, 2011 to August 7, 2017, the date Plaintiff responded to Defendants' Interrogatories.

Although Defendants reserved their objection to the limited time period in the authorizations, they sent subpoenas to a process server on June 4, 2018, to be served on five of plaintiff's health care providers, shortly after receiving the executed authorizations from Plaintiff. Plaintiff's counsel intervened and informed Defendants' counsel that they would obtain the medical records directly from the health care providers that Defendants had been forced to go through the trouble of subpoenaing.

Plaintiff thereafter produced records from the five providers on July 20, 2018, some of which contained "Attorneys' Eye Only" ("AEO") designations under the Court's Discovery Confidentiality Order (D.E. 21) as well as an unexplained redaction.

The parties continued to communicate about the scope of the medical records, leading to Plaintiff finally providing additional records with a broader time period in mid-October 2018.

D. Defendants' Subpoenas to Plaintiff's Health Care Providers.

On January 8, 2019, Defendants served Conforti with notices of subpoenas to six of Conforti's medical providers. In those subpoenas, Defendants sought: (a) the production of Conforti's medical records from July 1, 2018 to the present; and (b) to take the depositions of each of those six medical providers, with the six depositions originally noticed to take place on January 22-28, 2019.

On January 9, 2019, Defendants sent an email to Plaintiff challenging the AEO designations of certain medical records produced by Plaintiff.

After receiving notice of Plaintiff's objections to the subpoenas, Defendants contacted Dr. Charles Haddad, Dr. Joseph Vitale, Mary Vitale, and counsel for Vincent Fitzgerald and informed them that the depositions had been adjourned pending the outcome of the parties' dispute. The parties met and conferred on January 11, 2019, but the parties were unable to

resolve Plaintiff's objections to the depositions or Defendants' objections to the AEO designations.

Defendants' process server informed Defendants' counsel that the attempts to serve Dr. Tang at the address provided by Plaintiff's counsel in discovery were unsuccessful. In addition, service has not been perfected on Ms. Batista at the location provided by Plaintiff in discovery. During the meet and confer conference on January 11th, Plaintiff's counsel informed Defendants that they were aware that both Dr. Tang and Ms. Batista had relocated and changed practices, but to date no new addresses have been provided. The depositions of Dr. Tang and Ms. Batista cannot go forward until Plaintiff provides their current location.

As demonstrated in subsections E-J below, the testimony of Plaintiff's health care providers is highly relevant to Plaintiff's liability and/or damage claims.

E. Plaintiff's Treatment by Dr. Tang and Apicha.

After Plaintiff contacted Dr. Brian Day (an OB-Gyn physician affiliated with SJRMC) in May 2015 and was told in June 2015 that a hysterectomy could not be performed at SJRMC for gender identity disorder, Conforti provided a note from Dr. Ian Tang, a primary care physician then of Apicha Community Health Center. Dr. Tang's letter stated that Conforti had been diagnosed with "Gender Identity Disorder" and that he was "seeking a hysterectomy to aid with his female to male transition." As stated in his Complaint, Plaintiff took "steps, at Dr. Tang's direction, to align himself with his true sex". Complaint at ¶55.

At his deposition, Conforti testified that [REDACTED]

[REDACTED]

Conforti Dep. at 34:16-35:21. [REDACTED]

[REDACTED] In addition, the records

demonstrate that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Id.

F. Plaintiff's Treatment by Rissy Batista.

The records provided by Conforti show that Rissy Batista, a therapist then of Rissy's Lighthouse Therapeutic Services, began to treat him as early as March 2015. [REDACTED]
[REDACTED]
[REDACTED] Plaintiff's Dep. 186:3-20. [REDACTED]
[REDACTED] Id.

at 195:1-11. As with Dr. Tang, Conforti provided a note from Ms. Batista after his request for a hysterectomy was denied. Ms. Batista's letter stated that she had diagnosed Conforti with gender dysphoria and that a "full hysterectomy has been discussed at length and it's currently recommended to complete full transition from female to male."

The records from Ms. Batista also show that [REDACTED]
[REDACTED]
[REDACTED] Id. at
188:3-190:10. [REDACTED]
[REDACTED]
[REDACTED] Id. at 191:15-192:19. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Plaintiff's Dep. at 150:7-151:13, 154:4-9.

J. Plaintiff Identified Other Health Care Providers Not Disclosed Previously.

At his deposition, Plaintiff testified that he treated with a number of other health care professionals. Defendants now seek to take the depositions of two of these health care providers – neither of whom had been disclosed previously.

First, Plaintiff testified that he sought treatment from another OB/Gyn, Dr. Diana Vitale, in or about April 2015, but that he does not have any records in his possession from his treatment with Dr. Vitale. [REDACTED]

[REDACTED] Plaintiff's Dep. at 46:15-48:7, 56:3-57:11. [REDACTED]

[REDACTED] her. Id.
at 59:3-62:25.

Second, Conforti testified that he also treated with a neurologist, Dr. Avery Katz, [REDACTED]
[REDACTED] Plaintiff's Dep. at 182:14-
183:11. Conforti further testified that [REDACTED]

[REDACTED] Plaintiff's Dep. at 247:10-248:4.

It is unclear why the identities of these two physicians were not previously provided by Plaintiff.

LEGAL ARGUMENT

STANDARD

Under Rule 26 of the Federal Rules of Civil Procedure, “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.” Fed. R. Civ. P. 26(b)(1). Rule 26 is construed liberally in favor of disclosure, as relevance is a broader inquiry at the discovery stage than at the trial stage. Piserchia v. Bergen Cty. Police Dept., 2016 WL 4445746, *4 (D.N.J. August 22, 2016).¹ The movant bears the burden of persuasion on a motion to quash a subpoena and for a protective order. Mondis Tech. Ltd. v. LG Elecs., Inc., Civ. Action No. 15-4431(SRC)(SLW), 2017 WL 4155121, *2 (D.N.J. Sept. 19, 2017); see also Memory Bowl v. North Pointe Ins. Co., 280 F.R.D. 181, 185 (D.N.J. 2012) (stating that the party seeking a protective order bears the burden of persuasion).

Furthermore, as recognized by one of the cases relied upon by Plaintiff, a party seeking to quash a subpoena under Fed. R. Civ. P. 45 “has the heavy burden of demonstrating the unreasonableness or oppressiveness of the subpoena.” Schmulovich v. 1161 Rt. 9 LLC, 2007 WL 2362598, at *4 (D.N.J. Aug. 15, 2007) (denying motion to quash subpoenas directed to six different financial institutions).

As shown below, Plaintiff has failed to carry this heavy burden, and his Motion should be denied.

¹ Plaintiff’s attempt to graft the standard for evaluating a party’s request under Fed. R. Civ. P. 35 for a medical examination into Fed. R. Civ. P. 26 is improper and should be rejected by this Court.

POINT I

DEFENDANTS ARE ENTITLED TO TAKE DEPOSITIONS OF PLAINTIFF'S HEALTH CARE PROVIDERS

A. The Information to be Elicited at Deposition From Plaintiff's Medical Providers is Clearly Relevant to Plaintiff's Claims.

Conforti contends that he became “deeply depressed” and was caused “great anxiety” after he was informed on June 16, 2015 that his requested procedure could not be performed by Defendants to treat gender identity disorder, a decision that Defendants – a Catholic hospital and Catholic priest – were obligated to make by virtue of the “Ethical and Religious Directives for Catholic Health Care Services” promulgated by the United States Conference of Catholic Bishops. Complaint at ¶9. Conforti further asserts that he has “suffered emotional distress, humiliation, embarrassment, and a loss of dignity” as a result of Defendants’ actions. *Id.* at ¶10; see also id. at ¶¶90, 101. Indeed, the *only compensatory damages sought by Plaintiff in his prayer for relief are for claimed emotional harm.* However, while attempting to recover monetary damages from Defendants for alleged emotional distress, Conforti concedes in his Complaint that he has “long struggled with depression and anxiety.” *Id.* at ¶3.

Conforti expanded on these allegations at his deposition. Conforti testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Plaintiff’s Dep. at 162:2-15, attached to Mayer Decl. as Ex. A.

The depositions of Plaintiff’s health care providers is particularly necessary here since Conforti also testified that he cannot quantify his emotional distress damages because he is not an “expert” and that he is not qualified to diagnose depression. Even more importantly, Conforti claimed at his deposition that some of his medical records do not accurately portray what was he was feeling after SJRMC informed him of its decision. *Id.* at 256:9-14, 258:12-259:6.

Conforti also alleges that the hysterectomy that he asked Defendants to perform in 2015 was a “medically necessary” treatment for his gender dysphoria, a diagnosable mental health condition according to the DSM-V issued by the American Psychiatric Association. Complaint at ¶¶2, 30-31. Conforti contends that he has “long struggled with depression and anxiety rooted in the need to align himself with his true sex” and that he has “received hormone therapy under the direction and supervision of his primary care physician as well as other medical treatment.” *Id.* at ¶3.

As shown above, each of the medical providers who have been noticed for depositions provided treatment to Conforti in relation to one or all of these issues.² Defendants are clearly entitled to take their depositions under Rule 26 to probe these and other topics, including Conforti’s claim that a hysterectomy was a “medically necessary” treatment for his gender dysphoria, his claim that he experienced emotional distress/harm that was purportedly caused by Defendants, and whether the hysterectomy performed in 2015 proved to be successful in treating Plaintiff’s gender dysphoria.

B. Conforti Has Waived the Right to Claim Privilege or Confidentiality With Respect to the Relevant Aspects of His Treatment.

In Jaffee v. Redmond, 518 U.S. 1 (1996), the United States Supreme Court created a privilege protecting “confidential communications between a licensed psychotherapist” and patients made “in the course of diagnosis or treatment” and to “licensed social workers in the course of psychotherapy.” *Id.* at 15. The courts do not otherwise recognize a broad physician-patient privilege. Acquarola v. Boeing Co., 2004 WL 540487, *4 (E.D. Pa. Feb. 26, 2004).

² The noticed depositions include those of Dr. Tang and Ms. Batista, but they cannot go forward unless Plaintiff can locate their whereabouts. Defendants should also be permitted to take the deposition of another individual with Dr. Tang’s former employer, Apicha, particularly if Plaintiff cannot locate Dr. Tang. Finally, Defendants should be allowed to take the depositions of two of the newly-identified health care providers – Dr. Avery Katz and Dr. Diana Vitale.

However, this privilege is not absolute. This Court has adopted the rule that the “psychotherapist-patient privilege does not protect communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense.” Jackson v. Chubb Corp., 193 F.R.D. 216, 225 (D.N.J. 2000) (citations and internal quotation marks omitted); Stamy v. Pacler, 138 F.R.D. 412, 419 (D.N.J. 1990) (stating that the “recognized exceptions” to the general rule that communications between doctor and patient are confidential are that “the holder has either placed her condition in issue or the holder has placed the party seeking the waiver in a position where she is forced to defend herself”).

Other federal courts in the Third Circuit have reached the same conclusion on numerous occasions. See, e.g., McKinney v. Del. County Mem. Hosp., 2009 U.S. Dist. LEXIS 23625, at 12-13 (E.D. Pa. Mar. 20, 2009) (stating that the prevailing view in the Third Circuit is that “a party waives the privilege by placing their mental condition at issue”); Sarko v. Penn-Del Directory Co., 170 F.R.D. 127, 129 (E.D. Pa. 1997) (ordering the plaintiff to authorize the release of all records that contain confidential communications with her psychiatrist relating to her mental condition because the plaintiff waived the psychotherapist-patient privilege by placing her mental condition in issue); Sanchez v. U.S. Airways, Inc., 202 F.R.D. 131 (E.D. Pa. 2001).

Sanchez is particularly instructive. There, the plaintiff, Sanchez, asserted claims under Title VII for national origin and race discrimination and claimed that he experienced emotional distress as a result of his employment termination. In his interrogatory responses, Sanchez, like Conforti, divulged that he had received treatment specifically for mental and emotional distress allegedly caused by the defendant. Defendant then asked Sanchez to produce the complete file

from his psychotherapist. After obtaining and reviewing the records, Sanchez's counsel refused to produce the records, claiming they were irrelevant and contained privileged communications. The defendant then filed a motion to compel the production of the medical records. In opposing the motion, Sanchez reiterated the relevance argument and also claimed that his reasons for seeking treatment were personal and unrelated to the case, that he did not waive the patient-psychotherapist privilege when he merely asserted garden-variety emotional distress, and that he would not rely on the testimony of an expert or treating physician at trial.

After rejecting Sanchez' relevance argument as an improper unilateral determination, since plaintiff was the only party to review the records, the Eastern District of Pennsylvania concluded that the plaintiff had waived the privilege by placing his emotional condition in issue. In words equally applicable to Conforti's efforts to block discovery, the Court stated:

Essentially, however, what the Plaintiffs ask the Court to do is allow them to make a claim for emotional distress, but disallow the Defendant from discovering information about the myriad causes of their distress. Plaintiffs admit that factors unrelated to this action were involved in their decision to seek psychotherapy. The exact nature of these factors is presently unknown, but, their existence may serve to undercut or extinguish Plaintiffs' claims for emotional distress. If the records show that certain stress factors pre-dated Mr. Sanchez's termination, or that other factors unrelated to this litigation occurred after the termination, then Defendant could show that Plaintiffs' claims are either baseless, overblown or insubstantial.

Id. at 136. Although the district court held that Sanchez had waived the privilege, it noted that he could still prevent disclosure of the information by withdrawing his claims for emotional distress. Id.

As detailed above, Conforti, like Sanchez, seeks damages for emotional distress he claims was caused by Defendants, placing his mental condition directly in issue.

Contrary to Plaintiff's argument, the decision by this Court in Jackson v. Chubb does not support his position; it actually supports disclosure of his medical records and Defendants' right

to depose his medical providers. In that case, the issue before the court was whether the plaintiff had waived the psychotherapist-patient privilege with respect to *ongoing* treatment that the plaintiff had received long after filing her lawsuit. The court held that the plaintiff had waived the privilege by placing her mental condition in issue through her emotional distress claims, and ordered her to produce the records from her recent treatment. Id. at 225, 228.

In prior rulings, the court had already ordered the plaintiff in Jackson to identify all her health care providers, including mental health care providers, and to provide releases for all of her records, and the plaintiff had already complied with those orders. Explaining its prior rulings in part, the court reasoned that “[u]nder this rule, a plaintiff who is aware of potential legal claims and brings a complaint after the completion of psychotherapy will have been on notice, during the therapy, that the psychotherapist-patient privilege may be waived depending on the claims he/she ultimately asserts in the complaint.” Id. at 226 (emphasis added).

As discussed above, Conforti placed his mental condition in issue by claiming that he needed to undergo a hysterectomy due to a mental health condition and by claiming to have experienced emotional distress after his request for a hysterectomy was denied by SJRMC. Consistent with the prior rulings in Jackson, Plaintiff clearly has waived the psychotherapist-patient privilege.

C. Plaintiff’s Emotional Distress Claim is Not “Garden Variety”.

Rather than focus on the holding by the district court in Jackson v. Chubb, Plaintiff’s counsel relies on dicta that “garden variety” emotional distress claims do not waive the patient-psychotherapist privilege. (In Jackson v. Chubb, the Court held that the plaintiff alleged more than “garden variety” emotional distress and ruled, as described above, that the plaintiff had to produce the medical records or withdraw her emotional distress damages claim.) In doing so, Plaintiff incorrectly contends that the “in controversy” standard applicable to evaluating requests

for medical examinations under Rule 35 should be incorporated into the Rule 26 analysis. Plaintiff's Brief at pp. 14-15. That attempt to blur the inquiry should be rejected. See Frazier v. Sinseki, 2014 WL 1618448, *1 (W.D. Pa. Apr. 22, 2014) (“[C]ourts have consistently made a distinction between the ‘in controversy’ requirement in the context of Rule 35(a) and Rule 26(b)”).

Even if the dicta in Jackson had any precedential value here, Conforti is flat wrong that his “allegations of emotional distress” are “as garden variety as they come.” See Plaintiff's Brief at pp. 14-15. As discussed above, Plaintiff's life experiences and history of depression and anxiety, stemming from numerous stressors, are multilayered, highly unusual, and complex, and in no way garden variety, especially since a mental health condition also undergirds his request for a sterilization procedure at a Catholic hospital. See In re Consolidated RNC Cases, 2009 WL 130178, *7 S.D.N.Y. 2009) (causes of action alleging “severe emotional distress, emotional injuries, psychological harm, mental anguish, embarrassment, humiliation, shock, fright, and apprehension” are not garden variety); EEOC v. Maha Prabhu, Inc., 2008 WL 879741, *2 (W.D.N.C. Mar. 28, 2008) (finding that plaintiff in employment discrimination case suffered “unusually severe emotional distress,” not garden variety emotional distress, where she testified that as a result of the defendant's alleged actions she experienced stress, anxiety, humiliation, had trouble sleeping and interacting with people, was unable to eat, and was fearful of rejection from other employers).

Moreover, depositions of the health care providers is required because Plaintiff's history of anxiety and depression raises an issue about the causation of any emotional distress Plaintiff claims to have experienced based on Defendants' conduct, whether garden variety or otherwise. To allow Plaintiff to testify that he experienced emotional distress due to Defendants' denial of

his request for a hysterectomy, without allowing Defendants the opportunity to probe and challenge whether the distress may have been the result of other preexisting stressors, would be fundamentally unfair. See Frazier, 2014 WL 1618448, at *1 (finding that information and records are relevant to establish causation; “Otherwise, a plaintiff would be permitted to ‘assert a claim for emotional distress damages and simultaneously disallow Defendants to discover information into the possible causes of that stress.’”); Sarko, 193 F.R.D. at 130 (“allowing a plaintiff to hide . . . behind a claim of privilege when the condition is placed directly in issue in a case would simply be contrary to the most basic sense of fairness and justice”); Sanchez, 202 F.R.D. at 136 (“If the records show that certain stress factors pre-dated Mr. Sanchez’s termination, . . . then Defendant could show that Plaintiffs’ claims are either baseless, overblown or insubstantial.”).

Based on Plaintiff’s claim for emotional distress damages, the extensive information in his medical records regarding other stressors in his life, and the additional evidence that Plaintiff had a history of anxiety and depression that predates his request for a hysterectomy, Defendants are entitled to full discovery of Plaintiff’s medical and psychotherapy records from his treating physicians and mental health professionals, and to depose his treating health care providers. Accordingly, Plaintiff’s motion to quash Defendants’ subpoenas should be denied.

POINT II

PLAINTIFF'S TREATMENT BY CHARLES HADDAD, M.D.

Plaintiff also objects to the subpoena served upon Dr. Charles Haddad, who performed a hysterectomy on Conforti at Mountainside Hospital in Montclair, New Jersey on September 23, 2015 – the same month that he sought to schedule a hysterectomy at SJRMC. Given that Conforti's request to schedule a hysterectomy at SJRMC is at the crux of this matter, Dr. Haddad's records and his deposition are information to be elicited at his deposition are clearly relevant to Conforti's claims. However, Defendants are willing to forego taking Dr. Haddad's deposition if Plaintiff will stipulate that (i) gender identity disorder/gender dysphoria is the only medical reason presented to Dr. Haddad to support Conforti's request for a hysterectomy; and (ii) there was no other "medical necessity" in or prior to September 2015 to support his request for a hysterectomy.

If Plaintiff is unwilling to so stipulate, Dr. Haddad's deposition is clearly permissible under Rules 26 and 45, and Defendants should be permitted at his deposition to probe the topics set forth in the proposed stipulations, whether the hysterectomy proved to be successful in treating Plaintiff's gender dysphoria, and other relevant inquiry.

office designated by Plaintiff as AEO contains [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED] (Tang 00006, 68);
- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Tang 00006, 68); and
- [REDACTED]”
(Tang 000035, 38, 44, 50, 58, 61, 66, 71).

All of the information in these Tang records relates to stressors in Plaintiff’s life that predated the events that form the basis of his lawsuit against Defendants and likely contributed to or caused outright his alleged emotional distress. Similar highly relevant information abounds in the other documents designated as AEO by Plaintiff’s Counsel. See, e.g., Batista 00039 [REDACTED]

[REDACTED]
[REDACTED], Batista 00045 [REDACTED]
[REDACTED], Batista 00054 [REDACTED]
[REDACTED]
[REDACTED] Batista 00072 [REDACTED]
[REDACTED];
Fitzgerald 00014 [REDACTED]
[REDACTED] and Fitzgerald 00016 [REDACTED]
[REDACTED]

Not only are the AEO-designated records highly relevant to claims at issue in this case, but Plaintiff has failed to show with the requisite specificity that that Defense counsel’s use of those records in deposing Plaintiff’s own health care providers would work “a clearly defined

and serious injury to the party seeking closure.” Delanoy v. Township of Ocean, 2015 WL 3949199, at *7 (June 29, 2015). It is not sufficient to make a nebulous claim of harm to his “essential rights” if Conforti’s own doctors and therapists were to be questioned about details of his medical and mental health history that he may have chosen to conceal from them when seeking treatment. Plaintiff has provided no reason to think that his own doctors would violate their legal obligations of confidentiality and improperly disclose information from his medical records to the world.

And, as indicated above, Plaintiff can hardly claim that [REDACTED] [REDACTED] are somehow privileged or confidential when [REDACTED] [REDACTED]. At his deposition, Conforti admitted that he wrote an article titled “Writing to Heal” that was published in a Passaic County Community College newsletter that is available to the public on the Internet. See Mayer Decl., at Ex. C.; Plaintiff’s Dep. at 249:22-250:18.³ In that article, [REDACTED] [REDACTED] which Plaintiff never previously disclosed in this lawsuit. Plaintiff’s Dep. at 250:19-253:22. Any claim to AEO protection on those topics is frivolous.

Equally without merit is Plaintiff’s objection to Defendants’ sharing the AEO-designated records with any consulting and/or testifying experts engaged by Defendants provided that said experts first execute the Agreement to be Bound by Discovery Confidentiality Order annexed as Exhibit A to the Discovery Confidentiality Order. This is not a matter of Defendants seeking to publicly share, without any restriction, Plaintiff’s medical records. Rather, it is a matter of fundamental fairness in allowing Defendants to confer with expert witness in preparing for the depositions of Plaintiff’s medical providers, an application to compel the medical examination of

³ Conforti did not produce a copy of the article in discovery – it was found by Defendants’ counsel on the Passaic County Community College website.

Plaintiff, and trial on issues such as the “medical necessity” of Plaintiff’s request for a hysterectomy to treat gender dysphoria and the causes of Plaintiff’s alleged emotional distress and anxiety. Maintaining the AEO designation here would be “a drastic remedy given its impact on the party entitled to the information in that it ... can hamper the ability of the party to present his or her case.” Gillespie v. Charter Comms., 133 F. Supp.3d 1195, 1201-02 (E.D. Mo. 2015).

Finally, Defendants respectfully request that the Court accept Plaintiff’s counsel’s invitation to review the documents redacted by Plaintiff (Fitzgerald 016 and 061) in camera to determine whether the information about [REDACTED] is relevant to Plaintiff’s damages claims and therefore discoverable.

For all of these reasons, Plaintiff’s AEO designation of the identified health care provider records be modified such that Defendants may (i) use those records at the depositions of any of Plaintiff’s health care providers⁴ and (ii) disclose those records to any consulting and/or testifying experts engaged by Defendants provided that said experts first execute the Agreement to be Bound by Discovery Confidentiality Order annexed as Exhibit A to the Discovery Confidentiality Order.

⁴ Defendants have no objection to those portions of the depositions being treated as “Confidential” pursuant to the Discovery Confidentiality Order)

CONCLUSION

Defendants respectfully submit that Plaintiff Jionni Conforti's Motion to Quash Subpoenas and for a Protective Order should be denied in its entirety for the foregoing reasons.

Respectfully submitted,

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Dated: March 4, 2019

EXHIBIT 2

INDEX IN SUPPORT OF MOTION TO FILE UNDER SEAL

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
Exhibit B to Mr. Conforti's Motion to Quash and for a Protective Order (Dkt. 70)	<p>Mr. Conforti requests sealing of the entirety of Exhibit B to his Motion to Quash and for a Protective Order, (Dkt. 70), because it is comprised entirely of Mr. Conforti's highly sensitive medical records currently designated as "Attorneys' Eyes Only" pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes dates and diagnoses pertaining to Mr. Conforti's medical care, confidential notes made by Mr. Conforti's medical providers contained in his medical records, and details of Mr. Conforti's entire medical history. Further, these medical records are presently confidential and unavailable</p>	<p>If filed unredacted on the public docket, Exhibit B will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not</p>	Mr. Conforti maintains that any alternative to sealing medical records does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.	On February 4, 2019, the Court granted a motion to seal a pre-motion joint letter filed by Mr. Conforti, which contained the same or similar highly sensitive and personal medical information from Mr. Conforti's medical records. (Dkt. 68) (hereinafter, the "February 4 Sealing Order").	None

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
	to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.	granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.			
Partial redaction of Defendants’ Opposition, Ex. 1, pg. 2	<p>Mr. Conforti requests sealing of the redacted information on page 2 of Defendants’ opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from certain pages of Mr. Conforti’s medical records, which are currently designated as either “Confidential” or “Attorneys’ Eyes Only” pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes highly sensitive discussions between Mr. Conforti and his medical providers, including medical diagnoses and</p>	If filed unredacted on the public docket, Defendants’ opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti’s rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti’s trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.	Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.	<i>See</i> the February 4 Sealing Order. (Dkt. 68).	None

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
	<p>treatments prescribed to Mr. Conforti, and confidential notes made by Mr. Conforti's medical providers contained in his medical records.</p> <p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson ("Palmerson Decl.") ¶ 5.</p>	<p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>			
<p>Partial redaction of Defendants' Opposition, Ex. 1, pg. 3</p>	<p>Mr. Conforti requests sealing of the redacted information on page 3 of Defendants' opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from Mr. Conforti's deposition testimony and medical records, which are currently designated as either "Confidential" or "Attorneys' Eyes Only" pursuant to the</p>	<p>If filed unredacted on the public docket, Defendants' opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers</p>	<p>Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>	<p><i>See</i> the February 4 Sealing Order. (Dkt. 68).</p>	<p>None</p>

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
	<p>Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes confidential discussions between Mr. Conforti and his medical providers, including references to highly sensitive personal medical history relating to confidential notes made by Mr. Conforti's medical providers contained in his medical records.</p> <p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson ("Palmerson Decl.") ¶ 5.</p>	<p>and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>			
Partial redaction of Defendants' Opposition, Ex. 1, pg. 6	Mr. Conforti requests sealing of the redacted information on page 3 of Defendants' opposition because it reveals, contains and/or reflects highly sensitive personal and	If filed unredacted on the public docket, Defendants' opposition will reveal highly confidential medical and personal information about Mr. Conforti and	Mr. Conforti maintains that any alternative to sealing the redacted information	<i>See</i> the February 4 Sealing Order. (Dkt. 68).	None

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
	<p>medical information from Mr. Conforti's deposition testimony and medical records, which are currently designated as either "Confidential" or "Attorneys' Eyes Only" pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information references highly sensitive personal medical history and relate to confidential notes made by Mr. Conforti's medical providers contained in his medical records.</p> <p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson ("Palmerson Decl.") ¶ 5.</p>	<p>undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>	<p>does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>		
Partial redaction of	Mr. Conforti requests sealing of the redacted information	If filed unredacted on the public docket, Defendants'	Mr. Conforti maintains that	<i>See</i> the February 4	Defendants only object to the third

Material	Legitimate Public or Private Interest Warranting Relief	Clearly Defined and Serious Injury that Would Result if the Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
Defendants' Opposition, Ex. 1, pg. 7	<p>on page 7 of Defendants' opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from certain pages of Mr. Conforti's medical records, which are currently designated as either "Confidential" or "Attorneys' Eyes Only" pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes confidential discussions between Mr. Conforti and his medical providers, including references to highly sensitive personal and family medical history, medical diagnoses and treatments prescribed to Mr. Conforti, and confidential notes made by Mr. Conforti's medical providers contained in his medical records.</p>	<p>opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and</p>	any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.	Sealing Order. (Dkt. 68).	<p>proposed redaction on page 7, <i>i.e.</i> the second redaction under subsection F, "Plaintiff's Treatment by Rissy Batista," for which Defendants cite to "<u>Id.</u> at 195:1-11."</p> <p>Defendants object to this proposed redaction because they contend Mr. Conforti made this information public through his allegation in his Complaint that he has "long struggled with depression and anxiety", and therefore should not be redacted.</p> <p>Defendants do not object to the remainder of</p>

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	<p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.</p> <p>Finally, the information goes beyond the broad statement in Mr. Conforti’s complaint that he has “long struggled with depression and anxiety”, as the redacted information directly originates from medical records and relate to specific providers and diagnoses, none of which Mr. Conforti alleged or made public through his Complaint.</p>	his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.			proposed redactions on page 7.
Partial redaction of Defendants’ Opposition, Ex. 1, pg. 8	Mr. Conforti requests sealing of the redacted information on page 8 of Defendants’ opposition because it reveals, contains and/or reflects	If filed unredacted on the public docket, Defendants’ opposition will reveal highly confidential medical and personal information	Mr. Conforti maintains that any alternative to sealing the redacted	<i>See</i> the February 4 Sealing Order. (Dkt. 68).	None

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	<p>highly sensitive personal and medical information from certain pages of Mr. Conforti’s medical records, which are currently designated as either “Confidential” or “Attorneys’ Eyes Only” pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes confidential discussions between Mr. Conforti and his medical providers, including references to highly sensitive personal and family medical history, medical diagnoses and treatments prescribed to Mr. Conforti, and confidential notes made by Mr. Conforti’s medical providers contained in his medical records.</p> <p>Further, these medical records are presently</p>	<p>about Mr. Conforti and undermine Mr. Conforti’s rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti’s trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>	<p>information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>		

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	confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.				
Partial redaction of Defendants’ Opposition, Ex. 1, pg. 9	<p>Mr. Conforti requests sealing of the redacted information on page 9 of Defendants’ opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from certain pages of Mr. Conforti’s medical records, which are currently designated as either “Confidential” or “Attorneys’ Eyes Only” pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes confidential discussions between Mr. Conforti and his medical providers, including references to highly sensitive personal and family medical</p>	<p>If filed unredacted on the public docket, Defendants’ opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti’s rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti’s trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently</p>	<p>Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>	<p><i>See</i> the February 4 Sealing Order. (Dkt. 68).</p>	<p>Defendants only object to the first proposed redaction on page 9, for which Defendants cite to “Plaintiff’s Dep. at 150:7-151:13, 154:4-9.”</p> <p>Defendants object to this proposed redaction because they contend Mr. Conforti made this information public through his allegations in his Complaint that he sought a hysterectomy for treatment of gender dysphoria, and</p>

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	<p>history, medical diagnoses and treatments prescribed to Mr. Conforti, and confidential notes made by Mr. Conforti’s medical providers contained in his medical records.</p> <p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.</p> <p>Finally, the information goes beyond the broad statements in Mr. Conforti’s complaint that he sought a hysterectomy as treatment for gender dysphoria, as the redacted information directly originates from medical records and relate to specific providers and medical care, none of which Mr. Conforti</p>	<p>confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>			<p>therefore should not be redacted.</p> <p>Defendants do not object to the remainder of proposed redactions on page 9.</p>

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	alleged or made public through his Complaint.				
Partial redaction of Defendants' Opposition, Ex. 1, pg. 11	<p>Mr. Conforti requests sealing of the redacted information on page 11 of Defendants' opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from Mr. Conforti's deposition testimony and medical records, which are currently designated as either "Confidential" or "Attorneys' Eyes Only" pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information references highly sensitive personal medical history and relate to confidential notes made by Mr. Conforti's medical providers contained in his medical records.</p>	<p>If filed unredacted on the public docket, Defendants' opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private. Further, such publication would harm Mr. Conforti's trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are presently confidential and unavailable to the public. If this request to seal is not</p>	<p>Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>	<p><i>See</i> the February 4 Sealing Order. (Dkt. 68).</p>	<p>None</p>

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	Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.	granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.			
Partial redaction of Defendants’ Opposition, Ex. 1, pg. 19	<p>Mr. Conforti requests sealing of the redacted information on page 19 of Defendants’ opposition because it reveals, contains and/or reflects highly sensitive personal and medical information reflected in certain pages of Mr. Conforti’s medical records, which are currently designated as either “Confidential” or “Attorneys’ Eyes Only” pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>Further, the parties’ Discovery Confidentiality Order (Dkt. 21) recognizes the need to protect both</p>	<p>If filed unredacted on the public docket, Defendants’ opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti’s rights and interests in keeping such information private.</p> <p>Further, such publication would harm Mr. Conforti by not only revealing highly sensitive and personal information, but also seek to publicly relate Mr. Conforti to his dead name, a practice that has been deemed to be harmful</p>	Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.	<i>See</i> the February 4 Sealing Order. (Dkt. 68).	<p>Defendants only object to the first proposed redaction on page 19, which references a college newspaper article used as an exhibit during Mr. Conforti’s deposition.</p> <p>Defendants object to this redaction because the information is contained in a college newspaper article that Plaintiff admitted at his deposition to authoring. This article – which is publicly available</p>

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	<p>“private or confidential personal information” and “highly sensitive business or personal information.” (<i>Id.</i> ¶¶ 1-2). As such, the limited redactions relate to information that reveals, contains and/or reflects highly sensitive personal information, including that which is beyond the information purportedly contained in one college newspaper article published over a decade ago under a different name.</p> <p>Put simply, the article referenced is <i>not</i> directly attributable to Mr. Conforti, as it was purportedly published ten years ago under Mr. Conforti’s “dead name”, <i>i.e.</i> the name that a transgender person used prior to transition, which is not public. Therefore, a 10-year-</p>	<p>to transgender people. <i>See</i> Ryan Roschke, <i>What It Means to “Dead-Name” a Transgender Person, and Why You Should Stop</i>, PopSugar (June 18, 2018), available at https://www.popsugar.com/news/What-Dead-Naming-Transgender-Person-43923268.</p> <p>Lastly, these records are presently confidential and unavailable to the public. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>			<p>online – discusses the information that Plaintiff now contends is too sensitive and personal to appear on the public docket. The article itself is not confidential and the references to its contents should not be redacted from the brief.</p> <p>Defendants deny that their objection to this redaction within the context of this litigation is in any way the equivalent of “dead-naming” Plaintiff.</p> <p>First, the text in the brief sought to be redacted does not refer to Plaintiff by</p>

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	<p>old, limited reference to what is indisputably highly sensitive personal information does not obviate the need to protect the broad statements made in Defendants’ opposition from disclosure.</p>				<p>his birth name “Krystal Conforth.”</p> <p>Second, Plaintiff’s name change from “Krystal Conforth” to “Jionni Conforti” is far from secret – it is a matter of public record. <i>See In re Krystal Marie Conforth</i>, Superior Court of New Jersey, Law Division, Passaic County, Docket L-1975-15.</p> <p>Third, Defendants’ publicly filed Answer to the Complaint necessarily referred to Plaintiff’s former name because St. Joseph’s had no record of being approached by a “Jionni Conforti” in</p>

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					<p>June of 2015; instead, its records referred to Plaintiff by the legal name Plaintiff was then using when seeking a sterilization surgery at a Catholic hospital. <i>See</i> Defendants’ Answer at ¶ 8 (D.E. 8).</p> <p>Fourth, Plaintiff has cooperated in media coverage about this lawsuit that links him to his former last name of “Conforth.” For example, a newspaper interview of Plaintiff refers to Plaintiff’s wife as “Ashley Conforth” and shows a photograph of Plaintiff’s revised Birth Certificate that identifies Plaintiff’s</p>

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					father as “Ronald Conforth.” https://www.northjersey.com/story/news/health/2017/01/05/trans-gender-man-sues-st-josephs-paterson-over-denial-surgery/96205098/ https://www.northjersey.com/story/news/health/2017/01/05/trans-gender-man-sues-st-josephs-paterson-over-denial-surgery/96205098/
Partial redaction of Defendants’ Opposition, Ex. 1, pg. 20	Mr. Conforti requests sealing of the redacted information on page 20 of Defendants’ opposition because it reveals, contains and/or reflects highly sensitive personal and medical information from certain pages of Mr. Conforti’s medical records, which are currently designated as either	If filed unredacted on the public docket, Defendants’ opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti’s rights and interests in keeping such information private. Further, such publication would harm	Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted	<i>See</i> the February 4 Sealing Order. (Dkt. 68).	None

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	<p>“Confidential” or “Attorneys’ Eyes Only” pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>This information includes confidential discussions between Mr. Conforti and his medical providers, including references to highly sensitive personal and family medical history, medical diagnoses and treatments prescribed to Mr. Conforti, and confidential notes made by Mr. Conforti’s medical providers contained in his medical records.</p> <p>Further, these medical records are presently confidential and unavailable to the public. <i>See</i> Declaration of Jaclyn M. Palmerson (“Palmerson Decl.”) ¶ 5.</p>	<p>Mr. Conforti’s trust and confidential relationships with his medical providers and jeopardize his ability to seek medical care without fear that the information he provides would become public.</p> <p>Further, these medical records are not connected to Mr. Conforti publicly. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>	<p>information. <i>See</i> Palmerson Decl. ¶ 7.</p>		

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<p>Partial redaction of Defendants' Opposition, Ex. 1, pg. 21</p>	<p>Mr. Conforti requests sealing of the redacted information on page 21 of Defendants' opposition because it reveals, contains and/or reflects highly sensitive personal and medical information reflected in certain pages of Mr. Conforti's medical records, which are currently designated as either "Confidential" or "Attorneys' Eyes Only" pursuant to the Discovery Confidentiality Order. (Dkt. 21).</p> <p>Further, the parties' Discovery Confidentiality Order (Dkt. 21) recognizes the need to protect both "private or confidential personal information" and "highly sensitive business or personal information." (<i>Id.</i> ¶¶ 1-2). As such, the limited redactions relate to information that reveals,</p>	<p>If filed unredacted on the public docket, Defendants' opposition will reveal highly confidential medical and personal information about Mr. Conforti and undermine Mr. Conforti's rights and interests in keeping such information private.</p> <p>Further, such publication would harm Mr. Conforti by not only revealing highly sensitive and personal information, but also seek to publicly relate Mr. Conforti to his dead name, a practice that has been deemed to be harmful to transgender people. <i>See</i> Ryan Roschke, <i>What It Means to "Dead-Name" a Transgender Person, and Why You Should Stop</i>, PopSugar (June 18, 2018), available at</p>	<p>Mr. Conforti maintains that any alternative to sealing the redacted information does not provide the protections required for such sensitive and/or restricted information. <i>See</i> Palmerson Decl. ¶ 7.</p>	<p><i>See</i> the February 4 Sealing Order. (Dkt. 68).</p>	<p>Defendants object to all three proposed redactions on page 21 for the reasons set forth above regarding Defendants' objections to the proposed redaction on page 19.</p>

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	<p>contains, and/or reflects highly sensitive personal information, including that which is beyond the information purportedly contained in one college newspaper article published over a decade ago under a different name.</p> <p>Put simply, the article referenced is <i>not</i> directly attributable to Mr. Conforti, as it was purportedly published ten years ago under Mr. Conforti’s “dead name”, <i>i.e.</i> the name that a transgender person used prior to transition, which is not public. Therefore, a 10-year-old, limited reference to what is indisputably highly sensitive personal information does not obviate the need to protect the broad statements made in</p>	<p>https://www.popsugar.com/news/What-Dead-Naming-Transgender-Person-43923268</p> <p>Lastly, these records are presently not connected to Mr. Conforti publicly. If this request to seal is not granted, the disclosure of this information would cause significant harm to Mr. Conforti, his rights, and his privacy interests. <i>See</i> Palmerson Decl. ¶ 6.</p>			

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	Defendants' opposition from disclosure.				