

**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.

Honorable Claire C. Cecchi, U.S.D.J.
Honorable Cathy L. Waldor, U.S.M.J.

Case No. 2:17-cv-00050 (CCC/CLW)

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL
MENTAL EXAMINATION OF PLAINTIFF**

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PRELIMINARY STATEMENT

Defendants St. Joseph's Health, Inc., St. Joseph's University Medical Center, Inc. ("SJUMC"), and Father Martin D. Rooney (collectively, "Defendants") respectfully submit this motion to compel Plaintiff Jionni Conforti ("Plaintiff") to appear for a mental examination, pursuant to Fed. R. Civ. P. 35(a) and 37. In accordance with Rule 35, a mental examination is warranted here because Plaintiff has placed his mental condition in controversy and good cause exists for the proposed examination by Defendants' psychiatric expert.

As an initial matter, the entire basis of this lawsuit arises out of Plaintiff's mental health condition. [REDACTED]

[REDACTED] After conceding in his Complaint that he "had long suffered with depression and anxiety," Plaintiff claims that his gender dysphoria caused depression and anxiety and necessitated hormone therapy, surgical procedures, and continuing medical and psychological treatment as he transitioned from his birth sex of female to a transgender man.

One such surgical procedure that he sought because of his mental health was a hysterectomy. Plaintiff chose to seek this surgery, which has the direct effect of sterilization, from a Catholic hospital, SJUMC, in May and June of 2015. SJUMC could not accommodate Plaintiff's request for a hysterectomy – which was sought solely to treat gender dysphoria, and not because of any diseased tissue or organ – because SJUMC is and was forbidden from performing a sterilization procedure under the Ethical and Religious Directives applicable to all Catholic hospitals. Notwithstanding Defendants' constitutional right to the Free Exercise of religion, Plaintiff contends that SJUMC's refusal to perform the hysterectomy was

discriminatory and violated Section 1557 of the Patient Protection and Affordable Care Act and the New Jersey Law Against Discrimination.

Not only was Plaintiff's mental health the sole basis for his seeking the hysterectomy, but his mental health is likewise the sole basis for his claim for damages. Plaintiff contends that SJUMC's refusal to perform the hysterectomy caused him emotional harm because even though he had the hysterectomy done at another nearby hospital in New Jersey in the same month he requested at SJUMC, he was somehow harmed by the "delay." Plaintiff further maintains that he continues to suffer ongoing emotional harm as a result of Defendants' alleged discriminatory conduct. In particular, Plaintiff alleges in his Complaint that he became "deeply depressed," suffered "great anxiety," and continues to experience anxiety as a result of Defendants' purported discriminatory conduct. The only compensatory damages sought by Plaintiff is for the emotional distress he purportedly endured due to Defendants' refusal to perform the surgery on religious grounds.

Because Plaintiff's mental condition – his gender dysphoria, his long history of depression and anxiety, and the lone form of damages requested – plays an absolutely crucial role in this matter for both liability and damages, Defendants' psychiatric expert should be permitted to conduct an examination of Plaintiff's conditions and associated stressors.

Second, good cause exists under Rule 35 to permit Defendants' psychiatric expert to evaluate Plaintiff's claim that Defendants caused his emotional harm. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Regardless of whether Plaintiff now self-servingly claims that his alleged emotional distress is somehow "garden variety" (a non-medical label that

simply does not fit the complicated mental health issues presented here), Defendants have a right to determine through independent examination whether Plaintiff's preexisting gender dysphoria, anxiety disorder, depression, hormone therapy and other stress factors contributed to or caused the very harm he alleges was caused by Defendants.

Accordingly, Plaintiff should be compelled to appear for an independent mental examination within 30 days of the Court's Order, pursuant to Fed. R. Civ. P. 37¹ and 35(a).²

¹ As this Court is aware from previous hearings and telephone status conferences, counsel for Plaintiff and Defendants have conferred regarding the subject matter of this motion and were unable to reach agreement on having Plaintiff undergo a mental examination. Cf. Fed. R. Civ. P. 37(a)(1).

²Plaintiff has moved to quash the depositions that Defendants have noticed of certain of Plaintiff's treating physicians and health care providers, and the Court has not decided that motion as of this date. If permitted to take some or all of those depositions, Defendants believe that they may yield testimony and information that will further support the present application. Accordingly, Defendants reserve the right to amend this motion based on those depositions, and respectfully ask that the Court reserve decision on this motion until after those depositions have been completed and Defendants have submitted supplemental briefing.

**STATEMENT OF FACTS, RELEVANT PROCEDURAL
HISTORY, AND PROPOSED EXAMINATION**

A. Plaintiff's Claims

On January 5, 2017, Plaintiff commenced this action against Defendants alleging (1) sex discrimination in violation of Section 1557 of the Patient Protection and Affordable Care Act ("ACA"), 42 U.S.C. § 18116 (Count One), and (2) gender identity discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. §§ 10:5-1, *et seq.* (Count Two) (Dkt. 1).

B. Plaintiff's Treatment For the Mental Health Condition "Gender Dysphoria"

During his deposition on January 29, 2019, Plaintiff testified that [REDACTED]

[REDACTED] See Mayer Decl., Exh. A, excerpts from Plaintiff's Deposition ("Pl.'s Dep.") at ¶¶ 33:11-13. However, by Plaintiff's own admission, before that diagnosis he "had long struggled with depression and anxiety." Complaint, ¶ 3 (Dkt. 1). At or around the time of the gender dysphoria diagnosis, Plaintiff began the process of transitioning from his birth sex of female to a transgender man via hormone therapy. He also discussed undergoing more invasive surgery with this treating physician, Dr. Ian Tang, in New York City, as part of the transitioning process. *Id.* at ¶¶ 36:3-6, 48:20-49:20. To this end, in or around October 2014, Plaintiff underwent a double mastectomy in Texas. *Id.* at ¶¶ 50:8-16, 51:14-16.

Thereafter, in or around April or May 2015, Plaintiff began exploring the possibility of undergoing a total hysterectomy wherein he would remove all female body parts to deal with his alleged gender dysphoria. *Id.* at ¶¶ 59:10-15, 64:12-24. Plaintiff testified at his deposition that he preferred to undergo the total hysterectomy in or around September 2015. *Id.* at ¶ 134:20-22.

[REDACTED]

[REDACTED]

purported discriminatory conduct. Complaint at ¶¶ 9, 10, 72, 73. Plaintiff further alleges that Defendants' conduct caused him "great anxiety, as he not only had to once again search for a surgeon whom he could trust to perform this highly sensitive surgical procedure, but he also became, and remains, anxious about visiting" SJUMC in its Paterson or Wayne, New Jersey locations. Id. at ¶ 9. As such, in addition to injunctive relief (which is moot as to Plaintiff since he has already undergone a hysterectomy), Plaintiff seeks compensatory damages for his emotional distress and suffering, emotional pain and anguish, humiliation, degradation, embarrassment, violation of his dignity, and loss of enjoyment of life. See Mayer Decl. at Exs. B and C. Emotional distress damages are the only form of damages sought by Plaintiff in this case.

In addition to the allegations set forth in his Complaint and his written discovery responses, Plaintiff testified at his deposition that [REDACTED] Id. at Pl.'s Dep. at ¶¶ 162:4-11, 163:1-2.

Although Plaintiff attributes the distress and depression he allegedly suffered to Defendants' conduct, Plaintiff admitted at his deposition that [REDACTED] Id. at ¶ 194:18-20. Plaintiff's medical records also show that [REDACTED] See Mayer Decl., Ex. D VITALE00001. [REDACTED] Id. at VITALE00053-54. [REDACTED] Id. [REDACTED] Id. at VITALE00051-52. [REDACTED]

[REDACTED] Id. at VITALE00030-32,
VITALE00047-48.

Plaintiff's medical records also show that [REDACTED]
[REDACTED]
[REDACTED] See Mayer Decl., Ex. E, at
TANG00063-72.

Additionally, Plaintiff testified that [REDACTED]
[REDACTED]
[REDACTED] See Mayer Decl., Ex. A. at ¶¶ 196:25-197:19. This testimony conflicts
with his medical records [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Id. at ¶¶ 189:16-
190:10; see also Mayer Decl., Ex. F, BATISTA00065, BATISTA00072.³ [REDACTED]

[REDACTED]
[REDACTED] Id. at BATISTA00005-6,
BATISTA00026-27, BATISTA00063 -65. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Id. at BATISTA00032-35.

Although Plaintiff claims to suffer ongoing emotional harm and has sought treatment for
his psychiatric disorders after June 2015, his medical records do not definitively attribute his

³ [REDACTED]
[REDACTED] See Mayer Decl., Ex. A, at 234:11-20. Plaintiff also testified at his deposition that [REDACTED]
[REDACTED] Id. at 191:15-192:25, 193:18-21, 231:1-232:17.

ongoing anxiety and depression to Defendants. See Mayer Decl., Ex. A, at 249:4-10. In January 2017, for example, [REDACTED]

[REDACTED]. See Mayer Decl., Ex. F, BATISTA00061-62. Similarly, in or around February 23, 2017, [REDACTED]

[REDACTED] See Mayer Decl., Ex. G, FITZGERALD00012-20. Likewise, Plaintiff testified at deposition that [REDACTED]

[REDACTED] See Mayer Decl., Ex. A, at ¶¶ 248:14-249:10; see also Mayer Decl., Ex. D, VITALE00002-5. [REDACTED]

[REDACTED]

[REDACTED]

Id. at VITALE00080-84, VITALE000111-115.

D. The Proposed Examination of Mr. Conforti.

Defendants have engaged a psychiatrist, Donald Raymond Reeves, Jr., M.D., to submit an expert report in this matter. Dr. Reeves' proposed examination of Mr. Conforti will consist of a mental status examination, a developmental history, a psychiatric history (including treatments for psychiatric and psychological conditions), a family history, an education and work history, and the history of Plaintiff's alleged gender dysphoria.

As a predicate to his report, Dr. Reeves will assess during his examination, without limitation, the following topics: Plaintiff's alleged emotional distress, depression and anxiety that purportedly were caused by Defendants' conduct described in the Complaint, including the extent and duration of same, other potential causes of Plaintiff's alleged distress/ depression/anxiety and the treatment Plaintiff has undergone (including medications) for same;

and Plaintiff's claimed gender dysphoria and the impact on the dysphoria symptoms of the hysterectomy that Plaintiff underwent at a different hospital.

The examination will take place at Dr. Reeves' medical office, Hydrangea Hill Psychiatric Associates, Inc., located at 112 Raymond Avenue, South Orange, New Jersey 07079. The location is convenient to Mr. Conforti as it is less than 15 miles from his Totowa residence and Plaintiff will not be missing time from a job because he does not work. The entire examination is expected to be completed in approximately four hours.

LEGAL ARGUMENT

THE COURT SHOULD COMPEL PLAINTIFF TO APPEAR FOR A MENTAL EXAMINATION

Rule 35 of the Federal Rules of Civil Procedure provides, in relevant part, that when the "mental or physical condition" of a party "is in controversy," the court may order the party "to submit to a physical or mental examination by a suitably licensed or certified examiner" upon a showing of "good cause." Fed. R. Civ. P. 35(a). In applying Rule 35, courts must start with the "basic premise 'that the deposition-discovery rules are to be accorded *a broad and liberal treatment* ... to effectuate their purpose that 'civil trials in the federal courts no longer need be carried on in the dark.'" Schlagenhauf v. Holder, 379 U.S. 104, 115 (1964) (citations omitted)(emphasis added). "One of the purposes behind Rule 35 is to 'level the playing field' between the two parties in cases where a party's physical or mental condition has become an issue." Womack v. Stevens Transp., Inc., 205 F.R.D. 445, 446 (E.D. Pa. 2001) (quoting Ragge v. MCA/Universal, 165 F.R.D. 605, 608 (C.D. Cal. 1995)). Whether to compel a mental examination pursuant to Fed. R. Civ. P. 35 is within the sound discretion of the trial court. See, e.g., Shirsat v. Mut. Pharm. Co., Inc., 169 F.R.D. 68, 69-70 (E.D. Pa. 1996).

As shown below, Plaintiff's mental condition is in controversy on both liability and damages and Defendants have shown good cause for Dr. Reeves' examination. Accordingly, Mr. Conforti should be ordered to appear for an examination.

A. Plaintiff Has Placed His Mental Condition In Controversy.

The Third Circuit has articulated a number of factors to determine whether a mental examination pursuant to Fed. R. Civ. P. 35 is warranted. Kuminka v. Atl. Cty., 551 F. App'x 27, 29-30 (3d Cir. 2014). In addition to a claim of emotional distress, a mental examination is warranted where one or more of the following factors exist:

- 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' within the meaning of Rule 35(a).

Id. (affirming district court's decision to compel medical examination where plaintiff "alleged a claim for damages for emotional distress and explicitly included a cause of action for intentional infliction of emotional distress in her complaint.") (internal citations omitted). Courts in the Third Circuit have also considered allegations that the plaintiff's mental illness is "ongoing" to be evidence that he has placed his mental injury in controversy. See Dibrito v. Harrisburg Area Cmty. Coll., 2010 U.S. Dist. LEXIS 23237, at *1 n. 1, *2 n. 3 (M.D. Pa. Mar. 12, 2010) (citing Bowen v. Parking Auth., 214 F.R.D. 188, 195 (D.N.J. 2003)).

Here, in addition to allegations of emotional distress, Plaintiff has placed his mental condition in controversy in two distinct ways. First, Plaintiff acknowledges in his Complaint that he was diagnosed with gender identity disorder, anxiety, and depression—specific mental or psychiatric disorders that directly implicate the claims in this matter. Based on Plaintiff's own admissions and medical records, [REDACTED]

[REDACTED]

[REDACTED] See Complaint at ¶ 3 (alleging that “[a]s part of his treatment for gender dysphoria, [Plaintiff] has received hormone therapy under the direction and supervision of his primary care physician as well as other medical treatment.”); Mayer Decl., Ex. F, BATISTA00038-47.

Similarly, according to Plaintiff’s deposition testimony and the allegations in Plaintiff’s Complaint, [REDACTED]

[REDACTED] See Mayer Decl., Ex. A, ¶ 194:18-20; see also Complaint at ¶ 3 (alleging that Plaintiff “had long struggled with depression and anxiety rooted in the need to align himself with his true sex[.]”); Complaint at ¶ 34 (“If not properly treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation.”). Specifically, Plaintiff alleges that Defendants’ conduct caused him to become “deeply depressed” and to suffer “great anxiety.” Complaint at ¶ 10; see also Complaint at ¶ 73 (“Jionni was also depressed that after his long search to find a surgeon who could perform the surgery.... Jionni also felt anxiety at having to search for a new surgeon whom he could trust to perform this highly sensitive surgical procedure.”). These allegations of depression and anxiety clearly place Plaintiff’s mental condition “in controversy.” Denny v. Wingspan Portfolio Advisors, LLC, 2013 U.S. Dist. LEXIS 78796, at *5-7 (N.D. Tex. June 5, 2013) (finding that plaintiffs’ symptoms of anxiety and depression placed their mental conditions in controversy); accord Green v. Mich. Dep’t of Nat. Res., 2009 U.S. Dist. LEXIS 55458, at *6 (E.D. Mich. June 30, 2009) (concluding that plaintiff alleged “a specific mental or psychiatric disorder or injury as a result of Defendant’s conduct. In his Complaint Plaintiff alleges depression and in his affidavit he alleges ‘feelings of’ both depression and anxiety.”).

Second, Plaintiff has also placed his medical condition in controversy because he contends that he has suffered from *ongoing* gender dysphoria, anxiety, and depression. See Duncan v. Upjohn Co., 155 F.R.D. 23, 25 (D. Conn. 1994) (“Since plaintiff claims that he suffers ongoing psychiatric harm, the plaintiff has placed his psychiatric state in controversy.”); see also Guzman v. News Corp., 2012 U.S. Dist. LEXIS 82081, at *3-4 (S.D.N.Y. June 13, 2012) (“...[I]f a plaintiff asserts that a defendant’s actions caused a mental injury or ongoing mental illness, that plaintiff puts her mental condition clearly in controversy....”) (citing Schlagenhauf, 379 U.S. at 119). Specifically, Plaintiff alleges in his Complaint that he remains “anxious about visiting either [Defendants’] Paterson hospital or [Wayne hospital]—the two hospitals closest to his home—for medical care” due to Defendants’ alleged wrongful conduct. Id. at ¶ 10. Plaintiff testified at his deposition that he still feels emotionally “hurt” and “upset” by Defendants’ conduct. Id. at ¶¶ 162:4-11, 163:1-2. Moreover, Plaintiff’s medical records indisputably show that [REDACTED]

[REDACTED] See Mayer Decl., Exh. G, BATISTA00032 to BATISTA00035. Indeed, Plaintiff identified [REDACTED]

[REDACTED]
Id. at Exh. C, Rog. No. 5).

The fact that Plaintiff has decided not to retain a medical expert (at least for now) does not preclude this Court from compelling his mental examination. See Thiessen v. GE Capital Corp., 178 F.R.D. 568, 571 (D. Kan. 1998) (concluding that “the court is not convinced that plaintiff’s decision to refrain from presenting any expert or medical testimony with respect to plaintiff’s emotional distress claim somehow precludes defendants from requesting an examination pursuant to Rule 35.”). Moreover, the fact that Defendants have had an opportunity to review Plaintiff’s medical records does not in any way diminish the necessity of an

examination. Even where “plaintiff has produced voluminous medical records and reports,...this production does not necessarily negate the defendant’s interest in an independent examination of the plaintiff.” Duncan, 155 F.R.D. at 25. The nature of Plaintiff’s claims, his diagnosed long-term psychiatric conditions, and the medical records from Plaintiff’s treating physicians establish that there is no serious question that Plaintiff has put his mental condition directly in controversy. As such, Defendants should be permitted to have their expert conduct a mental examination of the Plaintiff.

B. Good Cause Exists To Compel The Mental Examination Of Plaintiff.

Because Plaintiff has placed his mental condition is “in controversy,” the Court must next decide whether Defendants have established “good cause” for the requested examination. Fed. R. Civ. P. 35(a)(2)(A). “Good cause requires a showing that the examination could adduce specific facts relevant to the cause of action and is necessary to the defendant’s case.” Womack, 205 F.R.D. at 447; see also King v. Mansfield Univ. of Pa., 2014 U.S. Dist. LEXIS 17059, at *4-5 (M.D. Pa. Feb. 11, 2014) (compelling medical examination where plaintiff placed his medical condition at issue based on averments in amended complaint and good cause existed where examination could adduce facts relevant to the cause of action and necessary to defendant’s defense). “Good cause” is also established where a plaintiff’s mental condition will play a “central role” in the case. See Eckman v. Univ. of R.I., 160 F.R.D. 431, 434 (D.R.I. 1994) (where plaintiff alleged physical and mental injuries due to sexual assault and intended to prove her injuries by testimony from therapists, the court compelled mental examination because her mental condition played a “central role” in case and defendants had substantial questions regarding extent and causation of injuries).

Good cause exists for an independent mental examination of Plaintiff because the examination will likely adduce facts highly relevant to Defendant’s defense of his discrimination

and emotional distress claims. [REDACTED]

[REDACTED] See Mayer Decl., Exh. E, TANG00063 to TANG00072. Plaintiff's medical records [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Mayer Decl., Exh.

D, BATISTA00032 to BATISTA00035. The cause and extent of his anxiety, depression, and other psychiatric or emotional harm clearly warrants examination by Dr. Reeves so that he or she can gather additional information and assess these and other issues explained in Plaintiff's medical and psychological records, as discussed above. See Ziemann v. Burlington Cty. Bridge Comm'n, 155 F.R.D. 497, 502 (D.N.J. 1994) (compelling medical examination despite defendants having opportunity to review plaintiff's medical records and conduct plaintiff's deposition because "...it is appropriate to permit examinations by both defendants' psychiatric and psychological experts. Their analyses will focus on different areas of thought and behavior."). To deprive Defendants of the assistance of an independent mental examination on this issue would unfairly and improperly preclude them from adequately preparing to defend against Plaintiff's emotional distress claim.

In addition, Plaintiff's mental health will clearly be a central issue at trial in this case. Although Plaintiff's counsel contends that his emotional distress is "garden variety" (a non-medical term that does not appear in the remedy provisions of the Affordable Care Act or Law Against Discrimination), Plaintiff's counsel has represented that Plaintiff will testify about the emotional harm that Defendants' justified denial of his hysterectomy supposedly caused him as

well as the purported harm caused by the “delay” in scheduling the hysterectomy. See also Complaint at ¶ 34 (“If not properly treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation.”). Also, it is hard to image a case that is less “garden variety” than the present matter, where Plaintiff’s mental health is key to why a sterilization procedure was sought at a Catholic hospital and is also the sole basis for the compensatory damages sought. Indeed, the “garden variety” label is inapposite here since the DSM-V observes that “[t]he critical element of gender dysphoria is the presence of clinically significant distress associated with the condition.”

Plaintiff’s counsel also wants Mr. Conforti to be free to testify about his concern that he needed a hysterectomy because of his personal concerns about cancer even though his medical records [REDACTED]

[REDACTED] Accordingly, good cause exists for a medical examination of Plaintiff. See Lowe v. Phila. Newspapers, Inc., 101 F.R.D. 296, 298-99 (E.D. Pa. 1983) (compelling Rule 35(a) examination because plaintiff’s emotional and mental harm “appear[ed] to be the central factual dispute in reference to damages[.]” where plaintiff sought damages for physical and emotional harm); see also Gray v. Florida, 2007 U.S. Dist. LEXIS 55236, at *5-6 (M.D. Fla. July 31, 2007) (compelling Rule 35 exam where plaintiff allegedly suffered from anxiety and depression prior to and as a result of discrimination and retaliation, finding that “Plaintiff’s emotional damages will be an issue in the case during trial and Plaintiff will no doubt testify, either through her own testimony or through that of an expert, regarding her claims of emotional distress and the extent of her damages related to such distress.”).

Furthermore, Defendants anticipate that the facts to be adduced by Defendants’ expert will be critical to Defendants’ ability to defend this case. Womack, 205 F.R.D. at 447. Plaintiff

testified to [REDACTED]

[REDACTED] Mayer Decl., Exh. D, Pl.'s Dep. at ¶¶ 189:16-190:10; see also Mayer Decl., Exh. G, BATISTA00065. Defendants have a right to determine whether Plaintiff's preexisting psychiatric disorders and other factors contributed to or caused the harm he alleges was caused by Defendants. This is clearly a subject on which an expert is likely to be helpful to Defendants and counsel and to a jury. Without an examination of Plaintiff, Defendants would be deprived of a full and fair opportunity to obtain relevant discovery on an issue that is very important to the defense of this case, to reasonably prepare for a trial on Plaintiff's claims, and to adequately challenge Plaintiff's emotional distress claim. See Bonner v. Normandy Park, 2008 WL 624942, *3 (W.D. Wash. Feb. 12, 2008) (compelling Rule 35 medical exam so defendants can evaluate plaintiff's mental state in order to challenge plaintiff's emotional distress claim, "to preserve defendant's right to a fair [trial]," and "to preserve the equal footing of the parties.").

Lastly, for the reasons set forth herein, Plaintiff's contention that he remains "upset," "hurt," and "anxious" as a result of Defendants' conduct, establishes "good cause" exists under Fed. R. Civ. P. 35. See Bonner, supra, at *3 (compelling IME where plaintiff asserted claim of emotional distress and his deposition testimony and complaint alleged that emotional distress was ongoing); accord Flores-Febus v. MVM, Inc., 299 F.R.D. 338, 341 (D.P.R. 2014) ("Factors relevant to a finding of good cause include...whether plaintiff is claiming ongoing emotional distress.") (internal citations and quotation marks omitted); Guzman, 2012 U.S. Dist. LEXIS 82081, at *3-4 (concluding that good cause exists where plaintiff asserts that "a defendant's actions caused a mental injury or ongoing mental illness...[.]") (citing Schlagenhauf, 379 U.S. at 119).

Because Defendants have established good cause for a mental examination of Mr. Conforti, the Court should compel him to appear pursuant for Fed. R. Civ. P. 35(a).

C. Plaintiff's Medical Records Should Be Sealed Pursuant To L. Civ. R. 5.3(c) And The Discovery Confidentiality Order.

Defendants ask this Court to seal this Brief and Exhibits A and C to G attached to the Mayer Declaration. Defendants make this request because Plaintiff has designated the documents reproduced as Exhibits A (relevant portions of Plaintiff's deposition testimony), C (Plaintiff's Answers to Defendants' First Set of Interrogatories), D (Plaintiff's medical records provided by Dr. Vitale), E (Plaintiff's medical records provided by Dr. Tang), F (Plaintiff's medical records provided by Ms. Batista), and G (Plaintiff's medical records provided by Mr. Fitzgerald) as "confidential" in accordance with the Discovery Confidentiality Order (the "Protective Order") entered by this Court on July 19, 2017. This application is being made pursuant to the terms of the Protective Order, which directs that in the event any information or documents designated as "Confidential" is filed with the Court, the filing party is obligated to petition that the confidentially-designated material be sealed in accordance with Local Civil Rule 5.3. [Docket Entry No. 21, at ¶ 1(d), 9].

This Court has discretionary power to control and seal court records, including "any materials filed with the Court or utilized in connection with judicial decision-making." L. Civ. R. 5.3(a)(1); see also Telebrands Corp. v. Newmetro Design, LLC, 2016 U.S. Dist. LEXIS 191179, at *3 (D.N.J. July 18, 2016). A court may place a document or documents under seal upon a showing of good cause, which turns on, among other things, "an examination of the 'legitimate private or public interests which warrant the relief sought,'" and "upon a determination that 'less restrictive alternative[s] to the relief sought is not available.'" Telebrands, 2016 U.S. Dist. LEXIS 191179, at *3 (alteration in original); see also L. Civ. R. 5.3(c)(3).

Here, based on Plaintiff submissions to this Court, Plaintiff deems his medical records “confidential” because the documents contain private or confidential personal information. [Docket Entry No. 21, at ¶ 1(a)-(d)]. Given the nature of the arguments made by Defendants in this motion, there is no less restrictive alternative available to Defendants than to rely upon the confidentially-designated documents while simultaneously following the terms of the Protective Order in seeking to seal these documents. Furthermore, Defendants’ request is narrowly tailored to only the confidential information identified above. Telebrands Corp., 2016 U.S. Dist. LEXIS 191179, at *2. As such, Defendants believe that good cause exists to seal Exhibits A and C to G of the Mayer Declaration and this Brief reflecting the contents of Plaintiff’s confidentially-designated documents.

CONCLUSION

Based on the foregoing, Defendants respectfully submit that Plaintiff should be compelled to appear for an independent mental examination within 30 days of the Court's Order and request that certain portions of this Brief and Exhibits A and C to G attached to the Mayer Declaration be sealed pursuant to L. Civ. R. 5.3.

Respectfully submitted,

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By: /s/ Christopher S. Mayer
Christopher S. Mayer
Thomas F. Doherty

Dated: July 22, 2019

**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.

Honorable Claire C. Cecchi, U.S.D.J.
Honorable Cathy L. Waldor, U.S.M.J.

Case No. 2:17-cv-00050 (CCC/CLW)

Motion Day: August 19, 2019

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL
MENTAL EXAMINATION OF PLAINTIFF**

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PRELIMINARY STATEMENT

Defendants St. Joseph’s Health, Inc., St. Joseph’s University Medical Center, Inc. (“SJUMC”), and Father Martin D. Rooney (collectively, “Defendants”) respectfully submit this reply brief in further support of their motion to compel Plaintiff Jionni Conforti (“Plaintiff”) to appear for a mental examination, pursuant to Fed. R. Civ. P. 35(a) and 37. For the reasons set forth in Defendants’ moving papers and briefly herein, a mental examination is warranted here because Plaintiff’s mental condition is clearly in controversy and good cause exists for the proposed examination by Defendants’ psychiatric expert.

Plaintiff has affirmatively placed his mental condition in controversy by (A) admitting to a long prior history of depression and anxiety, (B) seeking emotional distress damages as the only item of compensatory damages, and (C) producing medical records showing a history of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. These facts easily satisfy more than one of the “in controversy” factors articulated by the Third Circuit.

Moreover, as recognized by the United States Supreme Court in Schlagenhauf, a plaintiff’s mental condition may, as is the case here, be placed in controversy by other parties in the litigation. Against the backdrop of [REDACTED]

[REDACTED] Defendants submit that

Plaintiff’s mental condition and the causes thereof are very much in controversy despite Mr. Conforti’s attempt to block discovery under the guise of “garden variety” emotional distress.

There is nothing garden variety about a plaintiff being treated for [REDACTED]

[REDACTED]

[REDACTED].

Plaintiff cannot distance himself from this own Complaint, his deposition testimony, and his medical records which all demonstrate far more than garden variety mental health conditions and multiple likely causes other than Defendants' conduct. A narrowly tailored examination of Plaintiff's mental condition, extensive medical history, and the cause and extent of his emotional distress damages is justified and critical to the defense of Plaintiff's claims.

Moreover, good cause exists under Rule 35 to permit Defendants' psychiatric expert to evaluate Plaintiff's claim that Defendants caused his emotional harm. There is no dispute that Plaintiff's mental condition plays a central role in this case. Not only is Plaintiff's claim of discrimination predicated on his having gender dysphoria, but this condition may, even post-surgery, be a contributing, if not the sole, factor causing the emotional distress he now attributes to Defendants' conduct. And, as shown in Defendants' opening brief, Plaintiff's deposition testimony and medical records [REDACTED]

[REDACTED]. Far from being a "harassing" or "disproportionate" request as Plaintiff argues, Defendants have a right to determine through an independent examination whether Plaintiff's emotional distress was caused by Defendants or other factors.

Accordingly, for the reasons set forth in Defendants' moving papers and briefly herein, Plaintiff should be compelled to appear for an independent mental examination within 30 days of the Court's Order, pursuant to Fed. R. Civ. P. 37 and 35(a).

LEGAL ARGUMENT

**THE COURT SHOULD COMPEL PLAINTIFF TO APPEAR
FOR A MENTAL EXAMINATION**

Rule 35(a) empowers this Court to order a mental examination of a party when the "in controversy" and "good cause" requirements are satisfied. Schlagenhauf v. Holder, 379 U.S.

104, 118 (1964). Contrary to Plaintiff's contention, this motion is not based on "mere conclusory allegations of the pleadings" or "mere relevance to the case." Rather, Defendants have presented the Court with admissions by Plaintiff in his Complaint and deposition testimony and medical records from multiple health care providers demonstrating the undeniably complicated nature of Mr. Conforti's mental condition, both before and after St. Joseph's declined to surgically remove his healthy reproductive organs. As such, this Court should order Plaintiff to submit to an independent mental examination by Defendants' expert pursuant to Rule 35(a).

A. The "In Controversy" Factors Articulated By The Third Circuit Are Satisfied.

The "in controversy" standard articulated by Kuminka v. Atl. Cty., 551 F. App'x 27 (3d Cir. 2014) is disjunctive. In addition to claiming emotional distress, a plaintiff places his mental condition in controversy where "one or more" of the factors are satisfied. Id. at 29-30 (using "and/or" in standard). The cases cited by Plaintiff recognize that the absence of one factor is not dispositive. See Ortiz v. Potter, 2010 WL 796960, at *4 (E.D. Cal. Mar. 5, 2010); Simon v. Bellsouth Advert. & Pub. Corp., 2010 WL 1418322, at *2 (W.D.N.C. Apr. 1, 2010); Kob v. Cty. of Marin, 2009 WL 3706820, at *2 (N.D. Cal. Nov. 3, 2009).

i. Plaintiff Alleges More Than Simple Garden Variety Emotional Distress.

Plaintiff's assertions that he has not placed his mental condition in controversy and merely alleges garden variety emotional distress is belied by the admissions in his Complaint, his deposition testimony, and the medical evidence. Moreover, Mr. Conforti's denial of having placed his condition in controversy is not dispositive because a plaintiff's mental condition can be placed "in controversy" by other parties in the case subject to the Rule 35(a) requirements. Schlagenhauf v. Holder, 379 U.S. 104, 119-120 (1964). Such is the case here. Whether placed in

controversy by Plaintiff’s claims or Defendants’ defenses or both, Mr. Conforti’s mental condition is indisputably “in controversy,” warranting an examination.

The case law cited by Plaintiff for his “in controversy” argument is unavailing. For example, Turner v. Imperial Stores, 161 F.R.D. 89 (S.D. Cal. 1995)—cited by Plaintiff (Pl.’s Opp. at p. 7)—is easily distinguishable. Plaintiff alleges far more in this case. In particular, Plaintiff not only alleges in his Complaint that he has suffered “emotional distress, humiliation, embarrassment, and a loss of dignity,” but that he became “deeply depressed” *as a result* of Defendants’ conduct. See Pl.’s Compl. at ¶¶ 9, 10, 72, 73 (emphasis added). Plaintiff also alleges that Defendants’ refusal to allow him to undergo the total hysterectomy at SJUMC caused him “great anxiety.” Id. at ¶ 9.

This case more closely parallels Denny v. Wingspan Portfolio Advisors, LLC, 2013 WL 2434572 (N.D. Tex. June 5, 2013) where the defendants alleged discriminatory conduct caused the plaintiff to seek out psychological care. See id. at *2. The court in Denny recognized that a plaintiff “affirmatively places her mental condition ‘in controversy’ when she alleges a permanent or ongoing mental disorder or emotional distress or claims that she has required psychiatric or psychological care as a consequence of discriminatory treatment.” Id. at *1. The cases cited by Plaintiff echo this principle. See Cauley v. Ingram Micro, Inc., 216 F.R.D. 241, 244 (W.D.N.Y. 2003) (noting that hospitalization and treatment by physician places plaintiff’s claim beyond a bare allegation of emotional stress typically associated with discrimination case).

Plaintiff affirmatively identified [REDACTED]

[REDACTED]. Mayer Decl., Exh. C, Rog. No. 5. Similarly, Mr. Conforti’s Rule 26 disclosures identified Dr. Ian Tang and Ms. Batista as individuals with knowledge of Plaintiff’s gender dysphoria diagnosis. Mayer Decl., Exh. B, at p.

3. Plaintiff's contrived effort to now evade his own discovery responses is unavailing. See Dahdal v. Thorn Americas, Inc., 1998 WL 37532, at *2 (D. Kan. Jan. 28, 1998) (plaintiff placed mental condition "in controversy" where in response to interrogatories, she identified psychiatrist and psychologist with whom she sought psychiatric consultation) (Pl.'s Opp. at p. 8).

The medical records of Mr. Fitzgerald and Ms. Batista further indicate that Plaintiff's mental health condition is greater than mere "garden variety" emotional distress, and includes physical manifestations. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Mayer Decl., Exh. F, BATISTA26-34. [REDACTED]

[REDACTED]

[REDACTED] see id. at BATISTA61, [REDACTED]

[REDACTED]

[REDACTED] See Mayer Decl., Exh. E, FITZGERALD18. Clearly, there is no support for his claim that Plaintiff has garden variety emotional distress.

Plaintiff's promise that he will not offer the testimony of any expert in support of his claim for emotional distress damages (Pl.'s Opp. at 8-9), does not undercut Defendants' right to a mental examination under Rule 35, which is a permissible discovery tool and necessary for Defendants to refute Plaintiff's emotional distress damages claim. See Dahdal, 1998 WL 37532, at *2; Laney v. Hosp. Bd. of Directors, 2010 WL 5161367, *3 (M.D. Fla. 2010) (in granting Rule 35 motion, the court noted that "Defendant should have the opportunity to challenge Plaintiff's [emotional distress] claim and testimony through an expert witness even if Plaintiff does not intend to offer expert testimony"). Moreover, Plaintiff's promise to not offer an expert does not eliminate the possibility that he may rely upon the testimony of his treating physicians.

ii. **Plaintiff Alleges A Specific Mental Or Psychiatric Injury Or Disorder And Attributes His Alleged Anxiety And Depression To Defendants' Conduct.**

Plaintiff claims specific psychiatric injuries—deep depression and great anxiety—as a *result* of Defendants' alleged discriminatory conduct. See Pl.'s Compl. at ¶¶ 9, 10, 72, 73. The court in Turner recognized that courts will order plaintiffs to undergo mental examinations where the cases involve, in addition to emotional distress claims, “allegations of a specific mental or psychiatric injury or disorder.” Turner, 161 F.R.D. at 95; see also Simon, 2010 WL 1418322, at *3 (satisfying “in controversy” requirement where plaintiff “testified that health conditions resulting from his underlying claims against Defendant included depression, anxiety and post traumatic stress disorder.”). The cases cited by Plaintiff are distinguishable. See Hernandez v. Simpson, 2014 WL 4090513, at *3 (C.D. CA. Aug. 18, 2014) (noting that plaintiff did not claim that defendant's actions caused her bipolar disorder); Karrani v. JetBlue Airways Corp., 2019 WL 2269818, at *3 (W.D. Wash. May 28, 2019) (noting that plaintiff “will not seek to prove or claim that Defendant proximately caused his heart condition or loss of ability to work”).

Nor may it be ignored that the medical records indicate that [REDACTED]

[REDACTED]. See, e.g., Mayer Decl., Exh. F. Plaintiff misconstrues Defendants' arguments with respect to the relevancy of the pre-existing and ongoing nature of his gender dysphoria disorder. (Pl.'s Opp. at 15). In Hodges v. Keane, 145 F.R.D. 332 (S.D.N.Y. 1993), relied upon by Plaintiff, the defendants contested the plaintiff's Section 1983 claims and asserted that the plaintiff's history of paranoid schizophrenia affected his perception of the events underlying his claims and could affect his testimony at trial. Id. at 334. The court granted the defendants' motion to compel pursuant to Fed. R. Civ. P. 35 because “the plaintiff's mental condition [was] relevant not only to the extent of his past pain and suffering, but to its cause—*i.e.*, to the very existence of the claimed Section 1983 violations.” Id. at 335.

Here, as in Hodges, Plaintiff's gender dysphoria disorder goes to the heart of his claims. By his own admissions in his Complaint, his disorder is key to why a sterilization procedure was sought at a Catholic hospital. His condition prompted him to take steps to align himself with his true sex, i.e., to transition in a manner consistent with his gender identity. See Pl.'s Compl. at ¶ 55. His condition also prompted him to explore the possibility of a total hysterectomy. See id. at ¶ 56. Plaintiff chose to seek this surgery from a Catholic hospital, SJUMC, but SJUMC could not accommodate Plaintiff's request for a hysterectomy because SJUMC is and was forbidden from performing a sterilization procedure under the Ethical and Religious Directives applicable to all Catholic hospitals. See Mayer Decl., Exh. A, at ¶¶ 139:15-141:2. It is undisputed that Plaintiff's inability to receive this surgery at SJUMC forms the basis of his substantive claims.

Moreover, as in Hodges, Plaintiff's condition may also be a contributing, if not the sole factor, causing his alleged anxiety, depression, and emotional distress which he attributes to Defendants' alleged discriminatory conduct. See Pl.'s Compl. at ¶ 3 (alleging that Plaintiff "had long struggled with depression and anxiety rooted in the need to align himself with his true sex[.]"); see id. at ¶ 34 ("If not properly treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation."). Indeed, a 2011 study entitled "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden" (reprinted on the website of the National Center for Biotechnology Information) shows that Plaintiff's alleged anxiety, depression and distress could be attributable to his being transgender even after obtaining the surgery he wanted:

Sex-reassigned persons had a higher risk of inpatient care for a psychiatric disorder other than gender identity disorder than controls matched on birth year and birth sex....

* * *

It should therefore come as no surprise that studies have found high rates of depression, and low quality of life, also after sex reassignment.

* * *

This study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts, and psychiatric hospitalisations in sex-reassigned transsexual individuals compared to a healthy control population. This highlights that post surgical transsexuals are a risk group that need long-term psychiatric and somatic follow-up.

[<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3043071/>]

Discovery into Plaintiff's gender dysphoria disorder post-surgery is clearly relevant to his claims and necessary to the defense of this case. As such, Plaintiff's reliance on Robinson v. HD Supply, Inc., 2013 WL 3815987 (E.D. Cal. July 19, 2013) is misplaced. (Pl.'s Opp. at 16, 18).

Furthermore, the assertion that Plaintiff's diagnosed depression or anxiety connotes "generalized" or "non-clinical" meaning contradicts his extensive medical history. (Pl.'s Opp. at 13-14). Karrani, supra, and Winstead v. Lafayette Cty. Bd. of Cty. Commissioners, 315 F.R.D. 612 (N.D. Fla. 2016) are distinguishable for this reason. Moreover, Plaintiff's assertions that his *ongoing* anxiety and depression are not attributable to Defendants' conduct contradict his own testimony. (Pl.'s Opp. at 15-16). Unlike the situations with the plaintiffs in Bowen v. Parking Authority of Camden, 214 F.R.D 188 (D.N.J. 2003) and Montana v. Cty. of Cape May Bd. of Freeholders, 2013 WL 5724486 (D.N.J. Oct. 18, 2013), Defendants' alleged wrongful conduct occurred in June 2015, [REDACTED]

[REDACTED] See Mayer Decl., Exh. A, at ¶¶ 162:4-22, 163:1-2. Most significantly, Plaintiff's medical records indisputably show that [REDACTED]

[REDACTED] See Mayer Decl., Exh. F, G. There is absolutely no evidence in this case, unlike the cases cited by Plaintiff, to suggest that he only seeks to recover for past emotional distress. See Hernandez, 2014 WL 4090513, at *4 (noting that in light of plaintiff's allegations of *ongoing* sexual harassment, her claims of emotional distress were those "normally associated with or attendant to" the alleged injury); O'Quinn v. New York Univ. Med. Ctr., 163 F.R.D. 226, 228 (S.D.N.Y. 1995) (denying motion to compel

where “counsel for the plaintiff now represents that O’Quinn will *not* be seeking compensation for ongoing mental harm at trial.”) (emphasis in original).

Plaintiff has clearly placed his mental condition “in controversy” within the meaning of Rule 35 and, as such, Plaintiff should submit to a mental examination by Defendants’ expert.

B. Good Cause Exists To Compel The Mental Examination Of Plaintiff.

For the reasons set forth in Defendants’ moving brief and briefly herein, Defendants have established “good cause” for the examination pursuant to Fed. R. Civ. P. 35(a)(2)(A) because Plaintiff’s mental condition, including his ongoing gender dysphoria, depression, and anxiety disorders, will play a “central role” in the case. See Eckman v. Univ. of R.I., 160 F.R.D. 431, 434 (D.R.I. 1994). In light of Plaintiff’s extensive medical history, and the relevancy of possible contributing or superseding factors, Defendants have substantial questions regarding the extent and causation of his mental and emotional injuries. See Mayer Decl., Exh. A, at ¶¶ 189:16-190:10 ([REDACTED]); Mayer Decl., Ex. F, BATISTA65, BATISTA72. Even the cases cited by Plaintiff recognize that Defendants are entitled to pursue discovery which tends to show if Plaintiff’s alleged emotional distress was caused by discrimination or by other experiences in his life. See Dahdal, 1998 WL 37532, at *2.

Likewise, good cause exists because Plaintiff seeks substantial, unspecified damages stemming from his alleged ongoing emotional distress, [REDACTED]

[REDACTED] Plaintiff cites to Diunugala v. Dep’t of Conservation, 2018 WL 6137595 (C.D. Cal. Jan. 31, 2018) (Pl.’s Opp. at 8) where the plaintiff alleged have suffered “emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress” and damages “in an amount according to proof.” Id. at *2. Like the plaintiff in Diunugala, while

Plaintiff now attempts to characterize his emotional distress as “garden variety,” he cannot distance himself from his deposition testimony and the medical records where he seeks damages “in an amount to be established at trial.” See, e.g., Pl.’s Compl. at ¶ 90 (emphasis added). Defendants are entitled to explore the extent of his emotional distress damages which are alleged to be ongoing and severe in nature.

The principles of fairness and liberal pre-trial discovery bar Plaintiff from injecting his mental condition into this case while at the same time depriving Defendant of the essential opportunity to challenge and defend against his claims. See Jackson v. Chubb Corp., 193 F.R.D. 216, 225 (D.N.J. 2000). It is well-settled that “[o]nly if no additional relevant information could be gained by an examination of [plaintiff] should the motion for a psychiatric examination be denied.” Ragge v. MCA/Universal, 165 F.R.D. 605, 608 (C.D. Cal. 1995).

The deposition of Plaintiff has not provided a less intrusive means for Defendants to discover information about Plaintiff’s extensive history of emotional and mental health. As pointed out in his opposition, Plaintiff lacks the acumen to discuss at length the scientific foundation for his disorders or injuries and whether those disorders or injuries stem from Defendants’ conduct or another extenuating event. See E.E.O.C. v. Maha Prabhu, Inc., 2008 WL 2559417, at *2 (W.D.N.C. June 23, 2008) (“Where the average lay person would have difficulty evaluating the nature, extent, and cause of the claimant’s injuries, there is good cause for an independent medical evaluation.”). [REDACTED]

[REDACTED] See Mayer Decl., Exh. A, at ¶ 259:4-6.

The medical records also fail to afford Defendants a less intrusive means because they lack substantive detail as to the cause and extent of his alleged injuries. Plaintiff’s reliance on McLaughlin v. Atl. City, 2007 WL 1108527 (D.N.J. Apr. 10, 2007) is misplaced. (Pl.’s Opp. at 21). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See

Mayer Decl., Exh. F, at BATISTA32-35. [REDACTED]

[REDACTED] Plaintiff's arguments are further undermined by his

own motion practice seeking to preclude Defendant from conducting depositions of his treating physicians, who possess firsthand expert knowledge of Plaintiff's diagnoses and injuries.

The foregoing clearly establishes that good cause exists to compel Plaintiff to submit to a mental examination by Defendants' expert, pursuant to Fed. R. Civ. P. 35.

C. Plaintiff's Privacy Interests Do Not Outweigh Defendants' Right To Conduct A Rule 35 Mental Examination In This Case.

Contrary to Plaintiff's assertions, an independent mental examination is warranted in this discrimination case and should not be precluded simply because he is transgender. (Pl.'s Opp. at 22-23). Even the cases cited by Plaintiff acknowledge that where, as here, the requirements of Rule 35 are satisfied, a court may compel a party to attend a mental examination. See Cody v. Marriott Corp., 103 F.R.D. 421, 423 n. 4 (D. Mass. 1984) ("...[T]his Court does not suggest that a plaintiff could *never* place his or her mental or physical condition "in controversy" in an employment discrimination case.") (emphasis in original).

Indeed, this case hardly constitutes the "routine" discrimination case wherein a Rule 35 mental examination may be prohibited. See Benham v. Rice, 2007 WL 8042488, at *2 (D.D.C. Sept. 14, 2007) (citing Hodges, 145 F.R.D. at 335). The requested mental examination is narrowly tailored to address the nuanced issues in this matter, including Plaintiff's claimed emotional distress, including the cause and extent of his distress, as well as Plaintiff's claimed gender dysphoria and the impact on the dysphoria symptoms of the hysterectomy that Plaintiff underwent at a different hospital. Plaintiff's fears that the examination invades his privacy

interests as a transgender individual is overcome by the narrowly tailored scope of the examination and the existence of the Discovery Confidentiality Order entered by the Court. Cauley, 216 F.R.D. at 244.

CONCLUSION

For the reasons set forth in Defendants' moving papers and above, Defendants respectfully submit that Plaintiff should be compelled to appear for an independent mental examination within 30 days of the Court's Order pursuant to Fed. R. Civ. P. 35.

Respectfully submitted,
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Thomas F. Doherty

Dated: August 12, 2019