

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

ORDER

- against -

CV 2005-2769 (NGG) (MDG)

NORTH SHORE-LONG ISLAND JEWISH HEALTH
SYSTEM, INC.,

Defendant.

- - - - -X

GO, United States Magistrate Judge:

Plaintiff-Intervenor, who filed his complaint under a pseudonym, and the Equal Employment Opportunity Commission ("EEOC") bring this action against North Shore-Long Island Jewish Health System, Inc. ("North Shore"), inter alia, pursuant to Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. alleging that John Doe was discriminated against when North Shore disclosed confidential information about his disability. By order dated November 8, 2005, the Honorable Nicholas G. Garaufis referred plaintiff's and plaintiff-intervenor's joint motion to proceed anonymously to me for decision.

FACTUAL BACKGROUND

Plaintiff-Intervenor has worked for North Shore as a security officer since March 2000. Intervenor's Complaint ("Interv. Cmpl.") at ¶ 16. He has been diagnosed with and treated for bipolar disorder and generalized anxiety disorder with panic. Id.

at ¶ 17; Affirmation of Jonathan A. Bernstein dated October 6, 2005 ("Bernstein Aff."), Exhs. 1, 2, 7. In or about January 2003, John Doe sought medical leave from North Shore for treatment of his psychiatric disorders. Interv. Cmpl. at ¶ 17; Affidavit of John Doe dated April 6, 2004 ("4/6/04 Doe Aff.") at ¶ 1 (attached to Bernstein Aff. as Exh. 5).

While Mr. Doe was on sick leave, his supervisor allegedly disclosed confidential information regarding his disability to his co-workers. Interv. Cmpl. at ¶ 19. As a result, Mr. Doe's disability became common knowledge among the security officers at North Shore. Id. at ¶ 20. Plaintiff alleges that these disclosures caused him embarrassment which triggered a relapse into a severe depression lasting approximately two months. Id. at ¶ 21; Affidavit of John Doe dated August 2, 2003 at ¶¶ 4-5 (attached to Bernstein Aff. as Exh. 4); 4/6/04 Doe Aff. at ¶¶ 4-5; unsworn statement of John Doe's mother dated April 1, 2004 ("Mother's Statement") at 2 (attached to Bernstein Aff. as Exh. 6).

Plaintiffs claim that Mr. Doe will suffer emotional harm if his identity is revealed in this case, just as he suffered after his condition was disclosed by North Shore. Thus, plaintiffs seek an order permitting Mr. Doe to proceed anonymously.

DISCUSSION

Whether to allow a plaintiff to proceed anonymously is within the court's discretion. See EW v. New York Blood Center, 213 F.R.D. 108, 110 (E.D.N.Y. 2003); Doe v. Smith, 189 F.R.D. 239, 242

(E.D.N.Y. 1998), vacated on rehearing and modified on other grounds, 105 F. Supp.2d 40, 45 (E.D.N.Y. 1999); Doe v. Shakur, 164 F.R.D. 359, 360 (S.D.N.Y. 1996). Courts have applied various factors in determining whether a plaintiff's right to privacy outweighs the public interest in open proceedings and any potential prejudice to the defendant. See EW, 213 F.R.D. at 111; Shakur, 164 F.R.D. at 361; see also Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992) ("The ultimate test . . . is whether the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings'"). These factors include: 1) whether the plaintiff is challenging governmental activity or an individual's actions, 2) whether the plaintiff's action requires disclosure of information of the utmost intimacy, 3) whether the action requires disclosure of the plaintiff's intention to engage in illegal conduct, 4) whether identification would put the plaintiff at risk of suffering physical or mental injury, 5) whether the defendant would be prejudiced by allowing the plaintiff to proceed anonymously, and 6) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system. See EW, 213 F.R.D. at 111; Smith, 189 F.R.D. at 242; Shakur, 164 F.R.D. at 361; see also James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993).

As to the first factor, whether the defendant is a government entity is significant because challenging a governmental policy implicates a public interest and the government has less of a concern with protecting its reputation than a private individual.

See EW, 213 F.R.D. at 111; Shakur, 164 F.R.D. at 361. North Shore is neither a government entity nor an ordinary private party. As a hospital, it is like the blood center discussed in EW that "is organized solely to perform an important, public service." EW, 213 F.R.D. at 111-12. Even though the claims arise from defendant's conduct as a private employer, there is a public interest in vindicating Mr. Doe's rights founded upon North Shore's alleged disclosure of confidential medical information protected by federal privacy laws. Thus, I find that this case is more analogous to one involving a government defendant where any private concerns are outweighed by the overriding public interest in regulating the conduct at issue. Id.

With regard to the second and fourth factors, courts have found a wide range of issues sufficiently intimate to warrant a grant of anonymity. See, e.g., Roe v. Aware Woman Center for Choice, Inc., 253 F.3d 678, 685 (11th Cir. 2001) (abortion); Doe v. Evans, 202 F.R.D. 173, 176 (E.D. Pa. 2001) (sexual assault victim); WGA v. Priority Pharmacy, Inc., 184 F.R.D. 616, 617 (E.D. Mo. 1999) (status as AIDS patient); Doe v. United Services Life Ins. Co., 123 F.R.D. 437, 439 (S.D.N.Y. 1988) (sexual orientation). Among the subjects recognized to be so sensitive that disclosure would subject a plaintiff to a risk of humiliation, harassment or injury warranting anonymity is mental illness. See In re N.M., 325 B.R. 507, 507 n.1 (Bankr. W.D.N.Y. 2005); Smith, 105 F. Supp. 2d at 42-44; Doe v. Provident Life and Acc. Ins. Co., 176 F.R.D. 464, 468 (E.D. Pa. 1997); Anonymous v. Legal Services Corp. of San Diego, 932 F. Supp. 49, 50 (D.P.R.

1996); cf. Doe v. Gaughan, 808 F.2d 871 (1st Cir. 1986) (suit brought by mental patients); Doe v. Colautti, 592 F.2d 704 (3d Cir. 1979) (schizophrenic "Doe" plaintiff); Doe v. Harris, 495 F. Supp. 1161 (S.D.N.Y. 1980) (same).

Defendant questions the stigma attached to mental illness generally and the effect disclosure would have on Mr. Doe in particular. However, several courts have recognized real and legitimate concerns by those requesting anonymity to protect against disclosure of their mental illness. See In re N.M., 325 B.R. at 507 ("a stigma often attaches to even the suggestion of mental illness"); Smith, 189 F.R.D. at 243 (revelations regarding mental health constitute questions of deep intimacy and are likely to trigger social stigmatization); Provident Life, 176 F.R.D. at 467 (recognizing significant stigma attached to mental illness). Indeed, in recognizing a federal common law privilege protecting psychotherapist-patient communications, the Supreme Court has acknowledged both "the sensitive nature of the problems for which individuals consult psychotherapists" and the risk of "embarrassment or disgrace" from disclosure of counseling sessions. See Jaffee v. Redmond, 518 U.S. 1, 10 (1996).

In this case, the potential harm goes beyond social stigma. Although Mr. Doe did not submit an affidavit describing the injurious effect that disclosure of his identity would cause him, he has submitted evidence of the mental injury that he suffered from North Shore's disclosure of his mental health condition. After learning of the disclosure, Mr. Doe precipitously relapsed into a severe depression that lasted two months. 4/6/04 Doe Aff.

at ¶ 4; Mother's Statement at 2. During this time, Mr. Doe lacked the energy to leave his room and experienced sleeplessness for periods of several days at a time. 4/6/05 Doe Aff. at ¶ 4. As a result, Mr. Doe's doctor prescribed new medications and increased the dosages of other drugs. Id. at ¶ 5. Upon returning to work, Mr. Doe suffered from bouts of diarrhea, nausea, headaches and continued sleeplessness. See Mother's Statement at 2. Given Mr. Doe's precarious mental condition which was aggravated by the prior disclosure of his mental health condition, there is a significant risk that disclosure of his identity in this action could cause him substantial harm. Indeed, if Mr. Doe is required to reveal his identity in this action, he "will [further] sustain[] the injury which by this litigation [he] seeks to avoid." Roe v. Ingraham, 364 F. Supp. 536, 541 n.7 (S.D.N.Y. 1973) (decided by three-judge district court) (permitting patients to proceed by pseudonyms who brought suit to challenge the disclosure of their identity as patients).

Defendant attempts to counter these concerns by pointing to the fact that Mr. Doe did not shield his identity when he filed his EEOC charge of discrimination nor when he submitted his psychiatrist's report in conjunction with this motion. See Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion to Proceed Anonymously ("Def.'s Opp.") at 2, 6. However, as plaintiffs note, the EEOC would produce only redacted records in response to a Freedom of Information Act request for the charge of discrimination. See Plaintiffs' Reply Memorandum of Law in Support of Motion at 5-6; 5 U.S.C. § 552(b)(7). Moreover, in all

of plaintiffs' submissions, including Dr. Shah's report, Mr. Doe's name, his mother's name and his date of birth have been redacted.¹ See Bernstein Aff., Exhs. 1-8.

On the other hand, North Shore's claims of prejudice are overblown. First, North Shore argues that allowing Mr. Doe to proceed anonymously would impose undue burdens on it in connection with discovery and trial preparation. However, North Shore does not identify how its ability to conduct discovery or impeach Mr. Doe's credibility has been impaired if he is permitted to remain anonymous in court papers. Other than the need to make redactions and take measures not to disclose Mr. Doe's identity, this Court does not see how defendant has been hampered or inconvenienced. Indeed, North Shore already knows Mr. Doe's true identity and "will have full discovery rights as the case progresses, and it will only be barred from using or disclosing the fruits of its discovery for purposes other than the defense of this action." United Servs., 123 F.R.D. at 439; see EW, 213 F.R.D. at 112 (no prejudice to defendant where it already knew plaintiff's name). North Shore may still obtain any documents, depose any witnesses and ask them any questions necessary to its defense without regard to shielding Mr. Doe's identity. See Smith, 105 F. Supp.2d at 45 (no prejudice to defendant). Moreover, the restrictions contained in this order only apply to the discovery period and may be reconsidered if this case goes to trial. See id.

¹ The parties stipulated that any failure to redact Mr. Doe's identity contained in the exhibits to his motion was inadvertent. See ct doc. 23.

North Shore also argues that it would be unfair to allow Mr. Doe to maintain his anonymity while North Shore must defend itself from potentially negative publicity. However, North Shore does not point to any publicity concerning Mr. Doe's claim against North Shore, merely pointing to the EEOC's penchant for "using publicity to coerce defendants." Def.'s Opp. at 4 n.2, 14. Even assuming that anonymity increases plaintiffs' ability to communicate with the press outside the courthouse, the conduct of this litigation simply is not affected. See Doe v. Alexian Brothers Medical Center, No. 96 C 2042, 1996 U.S. Dist. LEXIS 5539, at *2 (N.D. Ill. Apr. 24, 1996) (plaintiff's press disclosures would not "influence the outcome of a trial, affect the defendant's rights or prejudice this case in any way").

CONCLUSION

For the foregoing reasons, plaintiffs' motion to proceed anonymously is granted.

Any objections to this order must be filed with the Clerk of the Court within ten days. Failure to file objections within the specified time waives the right to appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

SO ORDERED.

Dated: Brooklyn, New York
November 30, 2005

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE