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Why Medical Records Matter in Employment Litigation: What Have You Told Your Doctor That You Haven't Told Me

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I. DISCOVERY AND EMOTIONAL DISTRESS & DISABILITY CLAIMS

Employer's former receptionist, Barbie, brings a claim against Employer claiming disability discrimination, sexual harassment, age discrimination, and gender discrimination under the West Virginia Human Rights Act. As pled in her Complaint, Barbie seeks to recover typical damages, i.e. lost wages, lost benefits, etc., as well as damages for emotional and mental distress. Employer engages in discovery and requests Barbie to identify her medical providers and to execute a release that will allow Employer to obtain her medical records. Barbie objects to producing the information, arguing that (1) this information is not relevant to her employment litigation claim; (2) she is seeking only "garden variety" emotional distress damages; (3) the information contained within her medical records is private and confidential; and (4) the scope of the request is too broad in terms of time or the type of records that Employer is seeking.

In light of the foregoing, is Employer entitled to discover this information? The short answer is "yes" and practitioners representing employers in employment discrimination claims should actively pursue this type of discovery. The authority and arguments favoring discovery of this information are outlined below.

II. A REVIEW OF KEPLINGER and MARTIN

The Supreme Court of Appeals of West Virginia has never squarely addressed whether a plaintiff's medical history is discoverable in an employment discrimination case as described above; however, the holding in Keplinger v. Virginia Electric and Power Co., 208 W.Va. 11, 537 S.E.2d 632 (2000), suggests that discovery of such information is permissible and gives some indication regarding the appropriate period of time in which defense counsel may discover this information. Specifically, the Court in Keplinger noted that "a person who has

filed a civil action that places a medical condition at issue has impliedly consented to the release of medical information [and] this implied consent involves only medical information related to the condition placed at issue." Id. at 644. The Court also referenced Rule 26(b) of the West Virginia Rules of Civil Procedure[1], which states, in part, that parties may obtain discovery regarding matters that are "relevant to the subject matter involved in the pending action." Id.

A plaintiff in Barbie's shoes places her medical condition -- and, consequently, her medial records -- at issue in two ways. First, she has pled a disability discrimination claim in which she is alleging that she has a medical condition that allegedly constitutes a disability under the law. Accordingly, her Employer is entitled to conduct appropriate discovery on her medical condition to determine: (1) whether she has a disability, (2) where she is a qualified person with a disability, and (3) to obtain a relevant history of her medical condition. Second, a plaintiff like Barbie, who is seeking "damages for mental and emotional distress," places her medical condition at issue under both Keplinger and Rule 26(b). In cases like this, plaintiffs have impliedly consented to the release of this information.

[1] The scope of Rule 26(b)(1) of the West Virginia Rules of Civil Procedure is broad and provides as follows: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Moreover, Rule 34(a)(1) provides as follows: "Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in possession, custody or control of the party upon whom the request is served."

The Court in Keplinger noted that "[b]ecause of the highly personal and confidential nature of medical records, they should be subject to special consideration to assure that, in the process of discovery, there will be no unnecessary disclosure of medical information that is outside the scope of the litigation." Id. The Court also observed that "a patient may choose to allow broader disclosure of his or her medical records, which disclosure may be accomplished through a duly authorized release specifying the medical records to be disclosed." Fn. 15, Id. at 645. Thus, the use of authorizations to obtain medical records has been recognized by the Court as an appropriate discovery tool.

Importantly, Keplinger does not address whether it is proper for a plaintiff to produce a medical authorization so a defendant can request medical records when a plaintiff is claiming disability discrimination, failure to accommodate a disability, and is seeking mental/emotional distress damages. However, the Circuit Court in Keplinger ordered the plaintiff to respond to discovery requests regarding her medical history for a period of eight (8) years, noting that she had a continuing obligation to supplement this request. The Circuit Court also found that the defendant was entitled to obtain plaintiff's records directly from her health care providers without prior screening by plaintiff's counsel, and ordered plaintiff to execute releases and provide them to defendant so that her medical records could be obtained for the defined period. Id. at 635. The Circuit Court's ruling, as outlined above, was not overturned on appeal.

Other courts addressing this issue have found squarely in favor of employers. For instance, in Martin v. West Virginia U. Hosp., Inc., 2006 U.S. Dist. LEXIS 29142 (N.D. W.Va. 2006), Martin filed a claim against West Virginia University Hospitals, Inc. alleging that she suffered "emotional and mental distress, humiliation, anxiety, embarrassment, depression,

aggravation, annoyance and inconvenience." Id. at *2. Further, she sought "compensatory damages in an amount to be determined at trial for the severe emotional and mental distress, humiliation, anxiety, embarrassment, depression, aggravation, annoyance, and inconvenience suffered by her as a result of Defendant's unlawful conduct." Id.

WVU Hospital served Martin with discovery requesting information about her medical providers and prescription medication, and also requested copies of her medical records or a signed medical authorization. Id. at *3-4. Martin objected to WVU Hospital's discovery requests and argued, in part, that: (i) WVU Hospital's actions resulted only in "garden variety" emotional distress, (ii) some of the treatment occurred more than ten years prior to her lawsuit, and (iii) the information WVU Hospital was seeking was private and personal information. Id. at *5. WVU Hospital argued that it was entitled to discover all of Plaintiff's mental health records because Plaintiff put her mental health at issue, she was not seeking "garden variety" emotional distress, her history of depression was relevant, and the broad rules of discovery allowed for the production of mental health records even if the claim is for "garden variety" emotional distress. Id. at *5, *7.

Finding in favor of WVU Hospital, the Court held the information sought by WVU Hospital "'appears reasonably calculated to lead to the discovery of admissible evidence' and is therefore discoverable." Id. at *10. The Court also found the damages (mental and emotional distress) that Martin was seeking were not "garden variety" mental emotional distress damages. Id. In reaching this decision, the Court relied on several other cases, including LeFave v. Symbios, Inc., 2000 WL 1644154, *2 (D. Colo. April 14, 2000), where the Court held that medical records were relevant to a claim for emotional distress damages and to the defense against such a claim because they could reveal unrelated stressors. Id. at *8-9.

Obviously, the holding in Martin is not controlling legal authority if Barbie's claims are pending in a West Virginia Circuit Court; however, in light of the similarities between the federal and state discovery rules, that holding constitutes persuasive authority and should be relied upon practitioners pursuing this kind of discovery.

III. NUMEROUS COURTS HAVE EXAMINED THE DISCOVERABILITY OF A PLAINTIFF'S MEDICAL RECORDS IN EMPLOYMENT LITIGATION CASES

Several courts from other jurisdictions recognize that medical records are relevant in disability discrimination cases, in particular, and employment discrimination cases, in general, where plaintiffs seek recovery for emotional distress. For instance, in Butler v. Burroughs Wellcome, Inc., 920 F. Supp. 90, 91 (E.D. N.C. 1996), Butler sued her former employer, Burroughs Wellcome, Inc. ("BWI") claiming that BWI failed to reasonably accommodate her psychiatric disorder in violation of the American with Disabilities Act. During the litigation, Butler resisted providing her medical records and did not provide BWI with the appropriate authorizations or release forms. Id. In response, BWI filed a motion to compel discovery, which was granted by the Court. In granting BWI's motion, the Court stated:

> In an action under the ADA, a plaintiff's medical history is relevant in its entirety. It is impossible to answer the most basic questions, such as whether the plaintiff was generally foreclosed from similar employment by reason of a major life activity impairment, or otherwise qualified given an reasonable accommodation, or what a reasonable accommodation would have been, without full and complete access to the plaintiff's medical records. And since a defendant is entitled to defend the ADA action by claiming that plaintiff's inability to work without accommodation is the result of something other than the claimed disability, discovery along such lines must also be permitted.

Id. at 92.

A similar holding was reached in Lindsay v. Pennsylvania St. U., 2008 WL 1376273 (M.D. Pa. April 9, 2008), where Lindsay brought a claim against Pennsylvania State University ("PSU") under Title VII, the Americans with Disabilities Act, and Title IV. During discovery, PSU requested that Lindsay execute medical authorizations allowing the release of her medical records. The Court examined this issue on two occasions and eventually ordered Lindsay "to authorize the release of all of her medical records." Id. at *4. The Court noted that "the only way that we believe the defendant will be able to obtain all discoverable medical information with respect to plaintiff's disability will be to require plaintiff to authorize the release of all her medical records." Id.

In terms of emotional distress, a similar result was reached in Sanchez v. U.S. Airways, Inc., 202 F.R.D. 131 (E.D. PA 2001), where the plaintiff and his wife brought a claim against the defendant alleging racial discrimination under Title VII. As part of their claim, plaintiffs alleged they suffered significant emotional distress and defendant attempted to obtain medical records regarding this alleged emotional distress. Id. at 133. Plaintiffs objected to providing their medical records on the grounds of relevance, privacy and privilege, and specifically, they argued that "they did 'not waive the patient-psychotherapist privilege when they assert[ed] only garden-variety emotional distress.'" Id. at 134. In rejecting plaintiffs' argument and ordering the production of plaintiffs' medical records, the Court found as follows.

> Essentially, however, what the Plaintiffs ask the Court to do is to allow them to make a claim for emotional and mental distress, but disallow the Defendant from discovering information about the myriad causes of their distress. Plaintiffs admit the 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.

> It would be unfair to allow Plaintiffs to unilaterally determine the amount of harm Defendant caused, without allowing the Defendant or the fact-finder to argue, consider and weigh other relevant factors of emotional distress.
>
> To allow Plaintiffs to make a claim for emotional distress, but shield information related to their claim, is similar to shielding other types of medical records.
>
> In order to allege and recover for a harm, Plaintiffs need to show the existence and extent of the harm. The particular value of the harm is best left to the factfinder, after a careful view of the facts. The only way to adequately review the facts is to bring to light relevant information.

Id. at 136.

Likewise, in Garrett v. Sprint PCS, 2002 WL 181364, *1 (D. Kan. Jan. 31, 2002), Garrett claimed she was discriminated against on the basis of her race. Sprint PCS requested Garrett to produce her medical records from 1995 to the present. In objecting to providing these records, Garrett stated that "her claim for emotional pain, suffering, mental anguish are 'garden variety' claims for emotional distress and the request for access to her medical records is overly broad in time and seeks information that is irrelevant and unlikely to lead to the discovery of admissible evidence." Id. The Court rejected Garrett's "garden variety emotional distress" argument and in noting that Garrett was seeking damages for mental anguish, the Court stated that "the medical and psychological information sought by these interrogatories and requests for production are relevant as to both causation and the extent of [Garrett's] alleged injuries and damages." Id. at *2. Furthermore, the Court found that Garrett's argument that she would not present any expert testimony at trial regarding her emotional distress claim did not make her medical records/information any less relevant. Id. Finally, in addressing Garrett's argument that the scope of Sprint PCS's request was overly broad regarding the temporal scope, the Court found as follows.

> [E]mployment discrimination cases have held that discovery of information both before and after the liability period may be relevant and/or reasonably calculated to lead to the discovery of admissible evidence and courts commonly extend the scope of discovery to a reasonable number of years both prior to and following such period.

Id. Accordingly, Garrett was ordered to respond to Sprint PCS's request to provide medical information and limited the scope of the request to three years prior to the time of the alleged discriminatory conduct. Id. at *3.

Similarly, in Owens v. Sprint/United Mgt. Co., 221 F.R.D. 657 (D. Kan. 2004), Owens brought a claim against the defendant under Title VII and the Age Discrimination in Employment Act and sought emotional distress damages. The employer sought information regarding plaintiff's medical providers and treatment. In seeking Owens's medical information, defendant served an interrogatory asking Owens to identify her medical or health care providers, as well as requesting her to sign a release for her medical information. Id. at 658-659. Owens objected to these discovery requests and stated that she was only seeking "garden variety" damages and that she had not sought any medical treatment for injuries for which she was claiming defendant was responsible. Id. at 659. In rejecting Owens's argument, the Court stated as follows.

> Generally, discovery requests seeking an employment discrimination plaintiff's medical and psychological records are held to be relevant as to both causation and the extent of plaintiff's alleged injuries and damages if plaintiff claims damages for emotional pain, suffering, and mental anguish. The fact that these damages claims may be the "garden variety" of damage claims for emotional distress does not automatically exempt them from discovery.

Id. at 559-560. The Court found that "Plaintiff's medical and health care providers and records relating to her medical care, treatment, and counseling are relevant to the claims she seeks to

assert for her 'garden variety' emotional damages under Title VII" and in making this finding, the Court ordered plaintiff to provide supplemental responses to defendant's discovery requests.

Finally, in Equal Empl. Opportunity Commn. v. Sheffield Fin., LLC, the Equal Employment Opportunity Commission ("EEOC") brought suit under Title VII on behalf of Ahmed Ibrahim. 2007 WL 1726560 (M.D. N.C. June 13, 2007). Ibrahim sought compensatory damages for emotional distress and the EEOC refused to provide information regarding Ibrahim's medical, mental health, and pharmacy records. In its refusal to provide this information, the EEOC argued that "medical records are not discoverable when only 'garden-variety' incidental compensatory damage claims are at issue." Id. The Court, in granting the defendant's motion to compel, rejected the EEOC's argument and found that "[t]he fact that these damages claims may be the 'garden variety' of damage claims for emotional distress does not automatically exempt them from discovery…" Id.

Several other courts have reached similar conclusions. See also Hawkins v. Anheuser-Busch, Inc., 2006 WL 2422596. *2-*3 (S.D. OH Aug. 22, 2006) (holding that defendant met its burden in showing that for discovery purposes the plaintiffs' medical records fall within the scope of permissible discovery when plaintiffs claimed they suffered emotional distress in their sexual harassment and retaliation complaint, and further stating that "medical records...may also contain evidence which, while it might not assist the plaintiff in proving the causal relationship between workplace stress and emotional injury, might assist the defendant in showing either the lack of causal connection, or the presence of multiple causes" and that "it is important for the defendant to learn about and explore the impact of other factors that may have either created such a condition or caused a 'baseline' level of emotional distress to be present at the time of the alleged workplace injury"); Moore v. Chertoff, 2006 WL 1442447, *2-*3 (D.

D.C. May 22, 2006) (finding in a racial discrimination action, in which plaintiffs claimed emotional distress damages, that plaintiff may not "shield discovery of their medical records by vowing to forego at trial testimony of medical providers or experts" and also finding that "[w]here a plaintiff alleges emotional distress, a defendant is entitled to explore whether causes unrelated to the alleged wrong contributed to plaintiff's claimed emotional distress, and a defendant may propound discovery of any relevant medical records of plaintiff in an effort to do so"); Wilkes v. Federal Express Corp., 2001 WL 1910065, *1 (W.D. TN Nov. 14, 2001) (ordering the plaintiff to "execute releases for medical, employment, and IRS records" and granting defendant's motion for fees in having to bring a motion to compel); Calder v. TCI Cablevision of Missouri, Inc., d/b/a TCI Media Services, 2001 WL 991459, *1 (E.D. Mo. July 21, 2001) (emphasis added) (finding that plaintiff should execute medical releases for medical records and stating that "[b]ecause plaintiff is seeking damages for emotional distress, the Court finds that the medical records are discoverable to determine whether the plaintiff's past medical history contributed to her claimed emotional distress" and "plaintiff's medical history is relevant because her action is based in part on the ADA"); Henry v. City of Saginaw, 2000 WL 791788, *1 (E.D. MI May 25, 2000) (ordering plaintiff to provide defendant with a signed medical authorization); Equal Empl. Opportunity Commn. v. Danka Indus., Inc., 990 F. Supp. 1138, 1141-1142 (E.D. Missouri 1997) (holding that employees' medical records were discoverable to determine whether employees' past medical history contributed to their claim of emotional distress, which was alleged in the sexual harassment complaint brought against the defendant, and further noting that employees were seeking emotional distress resulting from the sexual harassment and their mental condition was directly related to the issue of damages and as such, defendant was entitled to conduct discovery on this issue).

The cases above clearly show that (1) in disability discrimination and/or failure to provide a reasonable accommodation cases, a plaintiff's medical records are relevant and discoverable; (2) a defendant-employer can only adequately evaluate emotional distress claims in any type of employment litigation case when it is allowed to review a plaintiff's medical records; (3) medical records are not only reasonably calculated to lead to the discovery of admissible evidence and relevant, but also a necessary disclosure when a plaintiff is claiming "garden variety" emotional distress damages because it allows a defendant to fully evaluate the nature and scope of the claim; and (4) "garden variety" emotional distress damage claims are not exempt from the discovery process.

IV. JUDICIAL ECONOMY AND EFFICIENCY ARE MET WHEN A PLAINTIFF PROVIDES A MEDICAL AUTHORIZATIONS

As implied above, a plaintiff, who tries to control the production of her medical records is obviously trying to act as the discovery gatekeeper, and she may try to continue in this role even after there is a ruling that her medical records are discoverable. For example, a plaintiff may offer to obtain her medical records on her own and then provide them to the defendant or a plaintiff may suggest that her medical records go to the court first for an *in camera* review. While these suggestions may sound reasonable, in fact, this only delays the discovery process and is extremely inefficient. Certainly, there is the potential that a plaintiff requesting and then producing her medical records may not always produce records in a timely fashion or when producing records, she may produce redacted records. In both situations, the parties will likely be back in court and fighting over an issue that a judge or discovery commissioner thought he/she solved weeks ago. Moreover, judicial economy is definitely not met when judges conduct *in camera* reviews of what could be voluminous medical records. Clearly, there is nothing efficient about either suggestion.

In Smith v. Logansport Community Sch. Corp., Smith brought sexual harassment and retaliation claims and alleged that she suffered emotional distress. 139 F.R.D. 637 (N.D. Indiana 1991). When defendant requested Smith to provide a medical authorization, Smith refused and the issue of obtaining Smith's medical records was brought before the Court on a motion to compel. The Court found that Smith, who asserted a claim for emotional distress, "placed her mental and emotional condition in issue and that the defendants are entitled to records concerning any counselings she may have received." Id. at 649. Furthermore, the Court found as follows.

> Where the mental or physical condition of a party has been placed in issue, **the practice of obtaining written consents for the release of records represents the least expensive and most efficient means of procuring information from medical or counseling providers.** Court orders directing providers to produce their records often prove unsatisfactory since they require the party seeking production to apply to the court each time the identity of an individual provider is discovered. Subpoenas duces tecum, which must be accompanied by witness fees and records deposition notices, can prove costly and may result in additional delay. **And orders directing the parties themselves to procure and produce their records give no assurance that all pertinent documents will be provided.** (citations omitted). (emphasis added)

Id. See also Equal Empl. Opportunity Commn., 2007 WL 1726560 at *6 (noting that defendant's request that the plaintiff execute authorizations releasing his medical records represented the "least expensive and most efficient means of procuring information from medical or counseling providers"); Nuskey v. Lambright, 2008 WL 2388914, *4 (D.D.C. 2008) (finding that that an *in camera* review of Nuskey's medical records was not necessary when "[a] narrowly drafted and conscientiously executed release significantly limits the risk that non-responsive records will be produced, and what risk remains is trumped by the need to conserve judicial resources").

Thus, as the above cases indicate, a plaintiff producing an authorization to defendant accomplishes several things: (1) it does not waste judicial time or resources, (2) it is efficient, and (3) it ensures that plaintiff does not become the gatekeeper of discovery and that all medical records are properly produced.[2]

V. PRIVACY CONCERNS AND A PROTECTIVE ORDER

Typically, a plaintiff, like Barbie, who resists providing medical records or medical authorizations, will argue that her privacy is being violated in having to provide this information. However, this argument has little merit since the West Virginia Rules of Civil Procedure provide a mechanism to offer protection to those records a plaintiff would classify as containing confidential or private information. Rule 26(c) of the West Virginia Rules of Civil Procedure allows parties to enter into a protective order so that confidential information, such as medical records, will have certain protections throughout the litigation. Certainly, counsel for parties in an employment litigation case can agree that there is a confidential aspect to an individual's medical records. Thus, parties should be able to construct a protective order that will offer protection to a plaintiff's concern of the confidential nature of medical records, while at the same time allowing a defendant to adequately discover information about a plaintiff's emotional distress damages claim or disability discrimination claim.[3] Thus, when parties or a Court are drafting a protective order, which defines "confidential information" for the purposes

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[2] See Lindsay, 2008 WL 1376273 at *4 (noting that it was not "fair for plaintiff to unilaterally determine (and be reimbursed by defendant for time spent determining) which records are discoverable, especially when she voluntarily elected to place her medical disability at issue in this case but yet is extremely adamant about her right to privacy with respect to her medical records").

[3] See LeFave, 2000 WL at *1-*2, (finding that in a constructive discharge case based upon sexual harassment, hostile work environment, and religious discrimination, defendants were entitled to discover plaintiff's medical records when plaintiff was seeking damages for embarrassment, humiliation, etc. and then later refused to produce her medical records, and also finding that the records would be produced under a confidentiality order).

of the case, it may be necessary to include "medical information" as part of the confidential information protected by the order.

A plaintiff may also argue that by being forced to produce this information, it destroys the a privileged relationship that he/she has entered into with a physician. There is no basis for this type of argument in West Virginia because the Supreme Court of Appeals has held that West Virginia has "no statutory scheme establishing a physician/patient privilege, nor has this Court judicially recognized such a privilege." State ex rel. Allen v. Bedell, 193 W. Va. 32, 35, 454 S.E.2d 77, 80 (1994).

Arguably, an Employer can take the position that a plaintiff seeking emotional distress damages in an employment related claim has no privacy interest and therefore, his/her records have to be produced. This proposition is supported in Butler, where the Court noted that in ADA actions, a plaintiff's medical history is relevant in its entirety. 920 F. Supp. at 92. It further noted that "ADA plaintiffs, like plaintiffs in an action for medical malpractice, waive all privileges and privacy interests related to their claim by virtue of filing the complaint." Id.

Also, as discussed above, in Equal Empl. Opportunity Commn., the Equal Employment Opportunity Commission ("EEOC") brought a lawsuit on behalf of Ibrahim alleging he was discriminated against on the basis of his national origin and claiming damages for emotional distress. During discovery, the defendant sought Ibrahim's medical records relating to his health care, mental health treatment, counseling, psychology, psychiatry, pharmaceutical prescriptions, and other medical issues. 2007 WL 1726560 at *1. After conferring with the EEOC regarding this issue, defendant filed a motion to compel and the

EEOC argued that it would not produce Mr. Ibrahim's records because "the required responses would involve too great an intrusion on Mr. Ibrahim's privacy….." Id. at *3.

The court rejected the EEOC's arguments and found the information being requested was relevant to plaintiff's damages claims for humiliation, anxiety, inconvenience, and loss of enjoyment of life. Id. at *4. In addressing the EEOC's argument regarding the protection of Mr. Ibrahim's privacy, the Court noted:

> To be sure, federal courts do recognize that patients have an interest in the privacy of their medical records, but this interest is not an absolute right nor is it dispositive in all circumstances. [citation omitted] Indeed, in the case cited by Plaintiff (*In re John Doe*), the court actually granted the motion to compel the medical records at issue. [citation omitted] Moreover, Mr. Ibrahim's privacy will be adequately protected because a Consent Protective Order has been entered for all documents and things produced in discovery. Federal courts have held that "the privacy of any individual and the confidentiality of the files may be protected by an appropriate protective order." [citation omitted] **Therefore, as Mr. Ibrahim's privacy is protected by a Consent Protective Order, the EEOC's contention that Mr. Ibrahim's privacy will be invaded is unwarranted.** (emphasis added)

Id. at *6.

Based upon the above, a defendant can legitimately argue that a plaintiff making an emotional distress claim and/or disability claim waives any privacy rights that she may have to her medical records. A compromise position for both a plaintiff and defendant, who are disputing this issue, is to enter into a protective order which will protect a plaintiff's privacy concerns and at the same time, provide defendant with the information that it needs to properly evaluate a plaintiff's claims.

VI. CONCLUSION

Employer should be able to defeat Barbie's arguments that (1) this information is not relevant to her employment litigation claim; (2) she is seeking only "garden variety" emotional distress damages; (3) the information contained within her medical records is private and confidential; and (4) the scope of the request is too broad in terms of time or the type of records that Employer is seeking. As the above cases demonstrate, a defendant is entitled to discover medical information of a plaintiff in employment litigation cases and it is telling that when a plaintiff adamantly disputes this discovery request, she in fact may be sharing information with her physician that she is unwilling to share with her attorneys or opposing counsel.