UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REGINALD MOORE *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No. 00-953 (RWR)(DAR)**
	)	
MICHAEL CHERTOFF,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs sued the United States Secret Service in part for emotional distress allegedly caused by racial discrimination in employment. The magistrate judge denied the defendant's motion to compel production of plaintiffs' medical records, finding no basis to compel since plaintiffs do not intend to offer at trial testimony of any health care providers to prove the distress. The defendant has moved for reconsideration of the magistrate judge's ruling. Because the magistrate judge's ruling was contrary to the weight of authority, defendant's motion for reconsideration will be granted.

BACKGROUND

Plaintiffs are current and former special agents of the United States Secret Service who filed this employment discrimination action alleging that the Secret Service has engaged in a pattern and practice of racial discrimination

against black agents. Plaintiffs seek to recover damages based on "emotional distress [which] has been manifested in a variety of ways including, but not limited to, psychological trauma and physical symptoms to be proven at trial." (Am. Compl. ¶ 17; see also Compl. ¶ 42; Proposed Am. Compl. ¶ 205 March 31, 2005.) Defendant propounded interrogatories requesting that plaintiffs turn over certain medical records.

> 13. For each plaintiff, identify each doctor and other health care provider, including without limitation any psychiatrists, psychologists, physicians, nurses, therapists, counselors, hospitals, and other health care facilities, who have provided the plaintiff with physical or mental care, treatment, counseling, or consultation during the past ten years.

(Def.'s Mot. to Compel Complete Resps. to Discovery Requests, Ex. 1, Def.'s Second Set of Discovery Requests at 8.) Defendant also requested that plaintiffs "[s]ign and provide fully executed release and consent forms for each and every health care provider plaintiffs identified in the answers to interrogatories." (Id., Ex. 1, Def.'s Second Set of Discovery Requests at 10.) Plaintiffs objected to this discovery request and refused to provide the requested information. (Id., Ex. 3, Plaintiffs' Resps. to Def.'s Interrogatories at 45-46.)

Defendant filed a motion to compel plaintiffs to provide the requested medical records, arguing the records were "plainly relevant" and that defendant was entitled to explore "whether there were any pre-existing conditions, whether there have been

other stress factors in their lives, and whether the evidence otherwise supports or contradicts Plaintiffs' damage allegations." (Id. at 4-5.) Plaintiffs opposed the motion, arguing that in circumstances where plaintiffs will not offer expert testimony to prove up their claims of emotional distress, a defendant is not entitled to plaintiffs' medical records. (See Pls.' Opp'n to Def.'s Mot. to Compel at 5-6.) The magistrate judge, relying on Sanders v. District of Columbia, Civil Action No. 97-2938 (PLF), 2002 WL 648965 (D.D.C. Apr. 15, 2002), ruled that because "plaintiffs do not intend to offer the testimony of any health care provider at trial[,]" defendant has "no basis upon which to seek discovery of the plaintiffs' medical records." (Pls.' Opp'n to Def.'s Mot. to Compel, Ex. A, Mot. Hr'g Tr. at 53, Dec. 12, 2005.)

Defendant seeks reconsideration of the magistrate judge's ruling pursuant to Local Civil Rule 72.2(b), and plaintiffs oppose the motion, adding as an additional justification for refusing to turn over the medical records that no plaintiffs sought any medical treatment for their alleged injuries.[1]

[1] Plaintiffs requested leave from the magistrate judge to file a motion advancing this argument. It is unclear from the parties' submissions whether the magistrate judge granted plaintiffs leave to file the motion or considered this argument.

DISCUSSION

"A party may invoke Federal Rule 72(a) and Local Rule 72.2 to seek reconsideration of a magistrate judge's determination in a discovery dispute" in the district court. Neuder v. Battelle Pac. Nw. Nat'l Lab., 194 F.R.D. 289, 292 (D.D.C. 2000). The district court "shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); see also LCvR 72.2(c) ("[A] judge may modify or set aside any portion of a magistrate judge's order under this rule found to be clearly erroneous or contrary to law.").

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). Discovery rules "are to be accorded a broad and liberal treatment." Hickman v. Taylor, 329 U.S. 495, 507 (1947). "When the discovery sought appears relevant, the party resisting the discovery has the burden to establish the lack of relevance by demonstrating that the requested discovery either does not come within the broad scope of relevance as defined under Fed. R. Civ. P. 26(b)(1) or is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure." Merrill v. Waffle House, Inc., 227 F.R.D. 467, 470-71 (N.D. Tex.

2005) (quoting Scott v. Leavenworth Unified School Dist. No. 453, 190 F.R.D. 583, 585 (D. Kan. 1999)).

Where 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. See, e.g., Schoffstall v. Henderson, 223 F.3d 818, 823 (8th Cir. 2000) ("[H]er claims [of extreme emotional distress] against [defendant] placed her medical condition at issue, making the [medical records] sought by [defendant] relevant, and absent a showing of bad faith, discoverable."); Merrill, 227 F.R.D. at 473 ("[S]everal courts have found that medical records are relevant to claims of mental anguish in discrimination cases."); Owens v. Sprint/United Mgmt. Co., 221 F.R.D. 657, 659 (D. Kan. 2004) ("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."); Jensen v. Astrazeneca LP, No. Civ. 02-4844, 2004 WL 2066837, at *4 (D. Minn. Aug. 30, 2004) ("[S]ome of plaintiff's medical records may be relevant and discoverable to the extent that they may shed light on other contributing causes of plaintiff's claims of emotional

distress."); Walker v. Northwest Airlines Corp., No. Civ. 00-2604, 2002 WL 32539635, at *3 (D. Minn. Oct. 28, 2002) ("[Plaintiff's] medical records may be . . . relevant if they shed light on other contributing causes of Plaintiff's emotional distress claims."); Fox v. Gates Corp., 179 F.R.D. 303, 306-07 (D. Colo. 1998) (holding that the defendant was entitled to discovery of any medical and psychotherapy records during the time of plaintiff's claimed emotional distress); Sidor v. Reno, No. 95 Civ. 9588, 1998 WL 164823, at *2 (S.D.N.Y. Apr. 7, 1998) ("Defense counsel has a right to inquire into plaintiffs' pasts for the purpose of showing that their emotional distress was caused at least in part by events and circumstances that were not job related."); EEOC v. Danka Indus., Inc., 990 F. Supp. 1138, 1141-42 (E.D. Mo. 1997) ("[T]he Court finds that the medical records are discoverable to determine whether the plaintiff-intervenors' past medical history contributed to their claimed emotional distress."). This is so, notwithstanding the fact that a plaintiff might not offer any expert testimony in order to prove up claims of emotional distress. See Garrett v. Sprint PCS, No. 00-2583-KHV, 2002 WL 181364, at *2 (D. Kan. Jan. 31, 2002) ("The fact that Plaintiff is not planning to present any expert testimony in support of her emotional distress claim does not make this information any less relevant."); Walker, 2002 WL 32539635, at *3 ("[R]egardless of whether

Plaintiff intends to introduce his medical records or offer medical testimony to prove his alleged emotional distress, [Defendant] is entitled to determine whether Plaintiff's relevant medical history indicates that his alleged emotional distress was caused in part by events and circumstances independent of [Defendant's] allegedly adverse employment action."); Sidor, 1998 WL 164823, at *2.

Here, plaintiffs allege emotional distress manifested in psychological trauma and physical symptoms. The defendant, then, may properly seek discovery of plaintiffs' relevant medical records. Relying on Sanders, plaintiffs argue that because they will not offer expert testimony at trial, their medical records are irrelevant. That assertion is a non sequitur. In Sanders, plaintiffs alleged emotional distress, and defendants sought discovery of plaintiffs' medical records "relating to 'past or present physical condition and treatment.'" Sanders, 2002 WL 648965, at *5. The magistrate judge in Sanders held, and the district court agreed, that medical records requested by the defendant were not discoverable "given counsel's statement that plaintiffs 'will not offer the testimony of any health care professional and will not offer any expert testimony on their mental, emotional or physical condition." Id. However, Sanders contains no discussion of the defendant seeking, as the defendant does here, the medical records to explore whether factors other

than the alleged employment discrimination caused plaintiff's alleged injuries. It is not clear, then, that Sanders stands for the proposition that a defendant may not obtain through discovery a plaintiff's medical records for the purpose of identifying potential alternative causes of claimed emotional distress solely because plaintiff will not offer expert testimony.[2] Review of plaintiffs' medical records could lead to the discovery of facts not related to employment discrimination that contributed to plaintiffs' alleged injuries. Whether plaintiffs intend to prove their damages claims with expert testimony has no bearing on the relevance of plaintiffs' medical records, or their ability to establish potential alternative causes for plaintiffs' symptoms.[3] Plaintiffs may not withhold from the defendant as irrelevant medical records that could be probative of potential causes contributing to plaintiffs' alleged injuries. Because the magistrate judge's ruling was contrary to the weight of

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[2] To the extent that Sanders does stand for that proposition, I part company with its holding.

[3] Plaintiffs also cite Burrell v. Crown Cent. Petroleum, 177 F.R.D. 376, 384 (E.D. Tex. 1997). However, that case dealt with mandatory disclosures under Rule 26(a)(1)(B), not "discovery regarding any matter, not privileged, that is relevant" under Rule 26(b)(1). See Merrill, 227 F.R.D. at 473 (holding Burrell inapplicable to a discovery request for medical records under Rule 26(b)(1)).

authority, defendant's motion for reconsideration will be granted.[4]

CONCLUSION AND ORDER

Having claimed emotional distress, plaintiffs may not shield discovery of their medical records by vowing to forego at trial testimony of medical providers or experts. Accordingly, it is hereby

ORDERED that defendant's motion [267] for reconsideration be, and hereby is, GRANTED. The magistrate judge's Order of December 12, 2005 denying defendant's motion [197] to compel is set aside, and defendant's motion to compel is remanded for further proceedings consistent with this Memorandum Opinion.

SIGNED this 22nd day of May, 2006.

/s/
RICHARD W. ROBERTS
United States District Judge

[4] Plaintiffs, citing Broderick v. Shad, 117 F.R.D. 306, 309 (D.D.C. 1987), argue in a footnote that an additional reason they should not have to turn over their medical records is that no plaintiffs sought any medical treatment for their alleged injuries. (Pls.' Opp'n to Def.'s Mot. for Reconsideration at 6 n.6.) Broderick held that a plaintiff's medical records were irrelevant where the plaintiff offered a sworn statement that she had not sought or received medical treatment for the injuries alleged and that no relevant medical records existed. 117 F.R.D. at 309. However, that case has no force here since plaintiffs have not asserted that no medical records relevant to potential alternative causes exist.