

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

ALBERT SNYDER,	:	
	:	
Plaintiff	:	Civ. No. 1:06-cv-01389-RDB
	:	
FRED PHELPS, et al,	:	
	:	
Defendant.	:	

**DEFENDANT FRED W. PHELPS'S AND WESTBORO BAPTIST CHURCH'S AMENDED
REPLY -- FILED UNDER SEAL -- TO PLAINTIFF'S OPPOSITION TO
MOTION TO RECONSIDER LIMITS ON DISCOVERY**

Defendants Fred W. Phelps, Sr. ("Phelps") and Westboro Baptist Church, Inc. ("Westboro" or "WBC") (collectively, "Defendants"), through undersigned counsel, hereby reply as follows to Plaintiff's Opposition to Defendants' Motion to Reconsider Limits on Discovery:

1. Plaintiff's Opposition claims that it filed for a protective order concerning a "very limited number of Plaintiff's medical records." However, to this day, Defendants remain in the dark about the contents of the medical records that have been withheld from Defendants by judicial order. The question is not how many pages of medical records were withheld, but their relevance to Defendants' defense involving critical First Amendment rights of Defendants both as to free speech and the free exercise of their religion, seeing that Defendants

contend that this lawsuit arises from Defendants' actions arising from their deeply-held religious beliefs.

2. Although Plaintiffs vaguely assert exploitation of Plaintiff's sexual history by Defendants, as addressed in Defendants' original Motion to Reconsider, it is Defendant's psychiatric expert Neil Blumberg who confirms how vitally relevant is Plaintiff's sexual history to result in a sufficient independent medical examination to respond to Plaintiff's claims of psychological damage arising from Defendants' alleged wrongs. Nobody will be well served for Defendants to present, through Dr. Blumberg, that the Court's limitation on the scope of his examination interfered with his ability to render a sufficiently and relevantly accurate independent medical examination, but no alternative exists if Defendant's Reconsideration Motion is denied.

3. In footnote 1 of his Opposition, Plaintiff asserts that an informal discussion should have preceded the filing of Defendants' Reconsideration Motion. Had Plaintiff's counsel who signed the Opposition (Sean Summers, Esquire) checked with his co-counsel Craig Trebilcock, he would have known that Mr. Trebilcock, undersigned counsel, and the Honorable Richard D. Bennett held such a phone conversation on July 30, 2007, on the

record with a court reporter present, during the deposition of Plaintiff's psychologist, Dr. Willard.

4. At page 2 of his Opposition, Plaintiff raises an issue already settled by this Court, which is that Defendants are entitled to know the contents of Plaintiff's discovery responses, and that their counsel has no obligation to shield them from such information and that Defendants need such information to sufficiently assist in their legal representation, including making an informed decision concerning any settlement offers to be made to Plaintiff.

5. It is regrettable that Plaintiff, at page 10 of his opposition, attempt to repackage psychiatric expert Neil Blumberg's expert opinion about the need for *him* to explore Plaintiff's sexual history (undersigned counsel is but a layperson as to psychiatry), into a claim of this being harassment, when Defendants request nothing more than brief inquiry by Dr. Blumberg.

6. Plaintiff, at pages 2-3 of his opposition talks of balancing the harms to the parties of granting Defendants' Reconsideration Motion. As addressed in ¶ 1, *supra*, Defendants' real First Amendment and pecuniary rights are at stake here, and they seek nothing more than some brief further inquiry by Dr. Blumberg. Where, as here, Plaintiff claims psychological damages

and pecuniary damages, this is little for Defendants to ask. See, e.g., *Hertenstein v. Kimberly Home Health Care, Inc.*, 189 F.R.D. 620, 624-627 (D.Kan. 1999) (where plaintiff alleged emotional distress and mental anguish as a result of sexual harassment, including major depressive disorder, post traumatic stress disorder and suicidal ideations, various requests for limits on IME were denied by the Court, and the court allowed IME inquiry into private non-work-related sexual activities because claims of emotional distress made sexual history relevant); *Giron v. Corrections Corp. of America*, 981 F.Supp. 1406, 1408-1409 (D. New Mexico 1997), *aff'd* 191 F.3d 1281 (10th Cir. 1999).

7. After the Court initially limited Dr. Blumberg's medical examination to a much shorter period than the Court later allowed, Defendants persuaded the Court to permit up to six hours, after giving the Court the benefit of Dr. Blumberg's Declaration.

8. Defendants hope to similarly persuade the Court to grant its Reconsideration Motion, now that the Court has the benefit of having Dr. Blumberg's IME report in its hands (attached to Defendants' Motion to Reconsider) which confirms the importance of the IME's including a sexual history (and not just relying on deposition questions, which prevents Dr.

Blumberg from eyeballing Plaintiff about such matters), and an excerpt of Plaintiff's deposition transcript, at pp. 57-58 (the testimony given by plaintiff on p. 58 (lines 3 to 8) of his deposition transcript (denying dating subsequent to his divorce), which is inconsistent with Dr. Blumberg's report at p. 6, second full paragraph stating otherwise ("Mr. Snyder stated that since his separation and divorce, he has done some dating, although he denied having any serious relationships since that time"). *See, e.g., Simpson v. University of Colorado*, 220 F.R.D. 354, 363-364 (D. Colo. 2004). The foregoing matters make inquiry into Plaintiff's sexual history (and to see the redacted medical records) all the more relevant, to test plaintiff's credibility against his deposition testimony and discovery answers to date, against his trial testimony, and against any other relevant information in this civil action.

9. The only difference between this amended Reply and the original Reply is that (a) this amended Reply confirms -- as advised by the Clerk's Office - that a copy of this document was delivered to the Court within twenty-four hours of August 30, 2007, and (b) this amended Reply confirms that a chambers copy of this document has been delivered to the Court.

WHEREFORE, Defendants respectfully move this honorable Court to reconsider its earlier rulings, by permitting

Defendants' counsel to review Plaintiff's medical record excerpts that have been redacted and sealed by the Court, to permit inquiry in follow up to the sealed materials, to permit inquiry about the inconsistency in Plaintiff's denial of post-divorce dating at his deposition but admission of such dating to IME Dr. Blumberg, and to permit the IME to be resumed to cover the IME topics previously disallowed by the Court. Defendants also move for a reasonable extension of the discovery deadline for the limited purpose of accomplishing the foregoing additional discovery. In the alternative, Defendants renew their January 29, 2007, request that the Court permit an independent psychological professional to review the sealed and redacted records of Plaintiff and to render an opinion as to their relevance to the mental, emotional and physical injuries plaintiff claims herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Amended Reply was served by e-mail and first-class mail, postage-prepaid, on August 30, 2007, to:

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