UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

TONYA RANEE SCATES,	)	
Plaintiff,	)	Civil Action No. 5:15-cv-32
	)	
v.	)	MEMORANDUM OPINION &
	)	ORDER
	)	
SHENANDOAH MEMORIAL HOSPITAL,	)	By: Joel C. Hoppe
Defendant.	)	United States Magistrate Judge

The Plaintiff, Tonya Ranee Scates, brought this action alleging that the Defendant, Shenandoah Memorial Hospital ("SMH"), terminated her in retaliation for her reporting of allegedly false billing practices. This matter is before the Court on SMH's Motion to Compel Scates's responses to discovery requests for her medical information. ECF No. 39. The Court held a conference call on April 4, 2016, to discuss this dispute, and the parties have fully briefed the issue, *see* ECF Nos. 40, 45, 46.

I. Discovery Requests and Party Positions

The dispute concerns whether Scates made her medical information discoverable by alleging in the Amended Complaint that she suffered emotional distress as a result of SMH's conduct, Am. Compl. 10, ECF No. 26. The specific discovery requests at issue are SMH's interrogatories that seek the names of any health care provider who treated Scates for symptoms related to her emotional distress claim[1] and the names of all health care providers who treated her in the past ten years.[2] ECF No. 40-1. Additionally, SMH seeks production of all medical bills

1 Interrogatory No. 2.
2 Interrogatory No. 3.

and records for treatment of any conditions allegedly caused by SMH's conduct,[3] all medical records since January 1, 2005,[4] and all mental health treatment or counseling records.[5]

SMH asserts that its discovery requests seek relevant information because Scates put her emotional condition at issue by claiming, as part of her compensatory damages, that she suffered emotional distress as a result of the Defendant's conduct. The nature of Scates's post-termination emotional distress and any preexisting conditions that may contribute to it are relevant topics of discovery according to SMH. Scates counters that she has not made a claim for physical or mental injury; rather, her claim is for "garden variety" emotional distress, and she does not intend to introduce medical records or testimony from a medical provider to support her damages claim. Additionally, she asserts that no medical provider has diagnosed her with a mental health impairment. Thus, she argues that she has not put her mental or physical condition at issue and her medical records are not relevant.

II. Analysis

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b). "The scope of relevancy under discovery rules is broad, such that relevancy encompasses any matter that bears or may bear on any issue that is or may be in the case." *Carr v. Double T Diner*, 272 F.R.D. 431, 433 (D. Md. 2010). The objecting party carries the burden of proving that the challenged discovery production should not be permitted. *Capital One Bank N.A. v. Hess Kennedy Chartered, LLC*, No. 3:08cv147, 2008 U.S. Dist. LEXIS 76385, at *4–5 (E.D. Va. Sept. 30, 2008).

3 Request for Production of Documents Nos. 8, 11.
4 Request for Production of Documents No. 9.
5 Request for Production of Documents No. 10.

SMH's requests for Scates's medical records concerning her emotional condition are plainly relevant to her claim for emotional damages. *See EEOC v. Sheffield Fin. LLC*, No. 1:06cv 889, 2007 U.S. Dist. LEXIS 43070, at *11 (M.D.N.C. June 13, 2007). Although Scates has represented to the Court that she does not intend to introduce any medical records or testimony from a treating medical professional, the Defendant may nonetheless inquire into her medical state to examine the extent of her claim for damages and how the Defendant's conduct impacted her. See *Carpenter v. Res-Care Health Servs., Inc.*, No. 3:12cv8047, 2013 U.S. Dist. LEXIS 57928, at *9 (S.D. W. Va. Apr. 23, 2013); *John Doe I v. Mulcahy, Inc.*, Civ. No. 08-306, 2008 U.S. Dist. LEXIS 81911, at *15–16 (D. Minn. Oct. 14, 2008); *Sheffield*, 2007 U.S. Dist. LEXIS 43070, at *12. Information about preexisting conditions is also relevant.

Resisting this conclusion, Scates cites *Koch v. Cox*, 489 F.3d 384 (D.C. Cir. 2007), for the proposition that a plaintiff does not bring her medical records within the scope of discoverable information by pleading a claim for "garden variety" emotional distress. *Koch* is distinguishable on its facts, however, as the plaintiff in that case, unlike Scates, did not assert a claim for emotional distress. *Id.* at 391 ("we hold that a plaintiff does not put his mental state at issue merely by acknowledging [in a deposition] he suffers from depression, for which he is not seeking recompense; nor may a defendant overcome the [psychotherapist] privilege by putting the plaintiff's mental state in issue.").

In briefing before the Court, Scates also asserts that her medical records are privileged as confidential client communications with a psychotherapist. This privilege arises from Rule 501 of the Federal Rules of Evidence and the Supreme Court's decision in *Jaffee v. Redmond*, 518 U.S. 1 (1996). In *Jaffee*, the Court held that "confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from

compelled disclosure under Rule 501." 518 U.S. at 15. A plaintiff may nonetheless waive this privilege if she has sufficiently placed her mental state at issue in the litigation. *Koch*, 489 F.3d at 391.

Scates did not object, however, to SMH's discovery based on the psychotherapist privilege. In her objections to the discovery requests and her briefing and argument before this Court, Scates did not even identify a psychotherapist who treated her, nor did she discuss the nature of the records she seeks to withhold. Having not even asserted that a psychotherapist treated her, Scates cannot demonstrate that the psychotherapist privilege applies,[6] and the Court does not have occasion to consider whether her claim for emotional distress amounted to a waiver of that privilege. *See Carpenter*, 2013 U.S. Dist. LEXIS 57928, at *8 (finding psychotherapist privilege not at issue where plaintiff did not claim to have any mental health treatment records). Thus, the psychotherapist privilege does not shield Scates's medical information from discovery. Furthermore, Scates's medical records from a treating source other than a psychotherapist are not privileged. *See Cappetta*, 266 F.R.D. at 126 (citing *Whalen v. Roe*, 429 U.S. 589, 602 n.28 (1977)) (noting there is no physician-patient privilege); *Fox v. Gates Corp.*, 179 F.R.D. 303, 305 (D. Colo. 1998) (same).

As discussed above, Scates has put her emotional condition at issue. Additionally, she put her overall medical situation at issue by seeking damages for lost or reduced wages over the course of her employment. Scates has disclosed reports of two vocational experts who offer opinions about the impact of SMH's conduct on her earning potential. ECF No. 45-1. Although they did not discuss her medical condition in forming their opinions, SMH seeks to challenge

6 The Court acknowledges the substantial disagreement amongst district courts about whether a plaintiff waives the psychotherapist privilege by asserting a "garden variety" emotional distress claim. *See Cappetta v. GC Servs. Ltd. P'ship*, 266 F.R.D. 121, 127–29 (E.D. Va. 2009) (discussing "narrow" and "broad" view of waiver and collecting cases); *Ruhlmann v. Ulster Cty. Dept. Soc. Servs.*, 194 F.R.D. 445, 448–50 (N.D.N.Y 2000) (same).

their opinions on grounds that any preexisting medical conditions may also impact her earning potential. Whatever the merits of this challenge, for discovery purposes in developing a potential defense, Scates's medical information is relevant. *See United Oil Co. v. Parts Assocs.*, 227 F.R.D. 404, 410 (D. Md. 2005) ("[R]elevance for discovery purposes is viewed more liberally than relevance for evidentiary purposes.")

The Court, however, agrees to an extent with Scates that SMH's requests cover too broad a period. Medical records from roughly the past three years—since February 1, 2013—should be sufficient to address any relevant preexisting conditions, any effect on Scates from SMH's conduct, and any medical conditions that could limit her future earning potential. *See Cappetta*, 266 F.R.D. at 126 (finding that two years of medical records would allow the defendant to determine a baseline for any preexisting conditions). Thus, the scope of Interrogatory 3 and Requests 9, 10, and 11 are narrowed to cover the period of February 1, 2013 to the present. Additionally, as Scates is not seeking compensation for any medical treatment or counseling, any billing information is irrelevant. Accordingly, Scates's objection to Request 8 is sustained and her objection to Request 11 is sustained in part.

III. Conclusion and Order

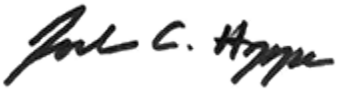
For the forgoing reasons, SMH's motion to compel, ECF No. 39, is GRANTED IN PART and DENIED IN PART.

Plaintiff's objection to Interrogatory 8 is sustained.

Within fourteen (14) days, the Plaintiff shall respond fully to Interrogatory 2, respond to Interrogatory 3 for the period of February 1, 2013 to the present, and produce all medical records, except for billing, sought in Request for Production of Documents 9–11 for the period of February 1, 2013 to the present.

It is so ORDERED.

ENTERED: April 18, 2016



Joel C. Hoppe
United States Magistrate Judge