

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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2004 JUN -2 AM 9:54

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, *et al.*,

Plaintiffs,

v.

CASE NO.: 8:03-CV-568-T-24MAP

CHECKERS DRIVE-IN RESTAURANTS, INC.,

Defendants.

ORDER

Inelia Pino-King and Stephanie Credit, the intervening Plaintiffs, are suing their former employer under Title VII and Florida's Civil Rights Act claiming their area manager subjected them to intolerable sexual harassment. Each demands damages for "humiliation, suffering, mental anguish, pain, anxiety, embarrassment, inconvenience, and loss of income." *See* doc. 19. Faced with these allegations, Checkers moves to compel they answer certain interrogatories (#s 3 and 11) and requests for production (# 24) about their medical and mental health treatment for the past ten years (doc. 49). Both object. Although both say they have not sought psychological counseling for any reason, and therefore have no information to give in that regard, each argues Checkers's demands are overbroad, not relevant to a claim or defense, and entail privileged information (doc. 52). After consideration, I find most of Checkers's demands are moot and the rest are overbroad and irrelevant to the claims and defenses raised in the lawsuit.

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A. Discussion

Because this is a federal question case, federal common law governs the privilege inquiry. *See* Fed. R. Evid. 501; *Hancock v. Hobbs*, 967 F.2d 462, 466-67 (11th Cir. 1992) (federal common law governs despite court's supplementary jurisdiction over the state law claim). Applying these principles, no physician-patient privilege exists under federal common law. *See, e.g., Northwestern Mem. Hosp. v. Ashcroft*, 362 F.3d 923, 926 (7th Cir. 2004). And, while federal courts recognize a psychotherapist-patient privilege, *see Jaffe v. Redmond*, 518 U.S. 1 (1996), Checkers' discovery demand for this information is moot because the Plaintiffs say they never sought such treatment. In short, the two have nothing to give Checkers. Consequently, the only issue remaining is whether Checkers has demonstrated the general medical information it seeks from the Plaintiffs is relevant to any claim or defense of any party in the pending action. Fed. R. Civ. 26(b)(1).

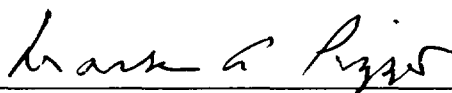
None of the records Checkers seeks, particularly from the broad sweep it makes, has any relevancy to any claim Plaintiffs make. Neither Plaintiff sought medical treatment arising from any claim leveled against Checkers. And neither is seeking any compensation for any medical treatment. To the extent Plaintiff Pino-King sought medical treatment for a pre-existing condition (injuries from a car accident) that may have been exacerbated by the offending harassment, she has already provided Checkers the name of the physician who treated her during that period. Thus, the demand for that information is moot. *See Doe v. City of Chula Vista*, 196 F.R.D. 562, 569 (S.D. Cal. 1999) (finding that defendants' interrogatories and subpoenas were overbroad and that "Doe's claim for emotional damages does not entitle defendants to invade the whole of Doe's medical

history"). Accordingly, it is

ORDERED:

1. Defendant Checkers Drive-In Restaurants, Inc.'s Motion to Compel (doc. 49) is DENIED.

DONE and ORDERED at Tampa, Florida on this 1 day of June, 2004.



MARK A. PIZZO
UNITED STATES MAGISTRATE JUDGE

cc: Counsel of Record

F I L E C O P Y

Date Printed: 06/03/2004

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