

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
THEODORE DALLAS,	:	
in his official capacity as Secretary of the	:	
Pennsylvania Department of Human Services,	:	
Defendant.	:	

MOTION TO ALLOW PLAINTIFF TO PROCEED IN ANONYMITY

Plaintiff John Doe comes before this Court seeking to proceed in anonymity in this matter. As noted in Plaintiff’s Complaint, Plaintiff is seeking coverage of certain procedures by the Commonwealth’s Medicaid program, administered by Defendant. Those procedures are physician prescribed as medically necessary for treatment of Plaintiff’s Gender Dysphoria (“GD”). Plaintiff is transgender (or “trans” or “transsexual”.) As the Third Circuit specifically noted in the recent case of *Doe v. Megless*, 654 F.3d 404, 408 (3rd Cir. 2011), transsexuality is a condition that has warranted anonymity in federal proceedings.

A proposed form of Order granting the requested relief is enclosed.

Respectfully Submitted,

Date: February 17, 2016

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**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION TO PROCEED IN ANONYMITY**

A. Introduction

Plaintiff John Doe has filed a Complaint herewith, alleging discrimination based on his Gender Dysphoria (“GD”) by the Defendant, and is seeking coverage through the Commonwealth's Medicaid programs administered by Defendant.

Plaintiff is transgender (“trans” or transsexual”) and fears that disclosure of his identity in connection with the lawsuit may lead to severe harm. Trans people are among the most powerless in society. (*See, e.g., Injustice At Every Turn, A Report of the National Transgender Discrimination Survey*, available at http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf: Ninety percent of transgender and gender nonconforming people report harassment, discrimination and mistreatment on the job, and the injustices they face have devastating economic and personal consequences.)

Plaintiff has been insulted, isolated and assaulted for being trans. (Declaration

of John Doe, para. 6, Exhibit A herewith (hereinafter (“Doe Declr. at para. __.”)) Plaintiff supports himself on SSDI and SNAP (“food stamps.”) *Id.* at para. 4. Based on his experience, Plaintiff fears that disclosure of his condition and the relief he seeks here will bring him severe harm. *Id.* at paras. 7-10.

B. The Law Favors Anonymity for Plaintiff

Federal Rule of Civil Procedure 10(a) requires a complaint to name all parties. Fed. R. Civ. P. 10(a). Rule 10(a) protects the public’s legitimate interest in knowing all of the facts involved in a case, including the identities of the parties. However, in “exceptional cases” courts have allowed a party to proceed anonymously. *Doe v. Megless*, 654 F.3d 404, 408 (3rd Cir. 2011). Plaintiff must show “both (1) a fear of severe harm, and (2) that the fear of severe harm is reasonable . . . The circumstances of a case determine whether a pseudonym is justified, and have included cases involving abortion, birth control, transsexuality, mental illness, welfare rights of illegitimate children, AIDS, and homosexuality.” *Id.* at 408. (emphasis added, quotations, citations omitted.)

The court in *Megless* adopted “non-exhaustive” factors from *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 467 (E.D. Pa. 1997) to help analyze whether anonymity is warranted. The relevant factors favoring anonymity are:

- (1) the extent the litigant's identity has been kept confidential;
- (2) the basis on which disclosure is feared or avoided, and its substantiality;
- (3) the magnitude of the public interest in maintaining the litigant's confidentiality;
- (4) whether, due to purely legal issues, there is an atypically weak public

interest in knowing the litigant's identity;...; and,

(6) whether the litigant has illegitimate ulterior motives.¹

The relevant factors disfavoring anonymity are:

(1) universal public interest in accessing a litigant's identity;

(2) whether, due to subject matter, the litigant's status as a public figure or otherwise, weighs strongly towards knowing [the litigant's] identity, beyond the public's interest; and,

(3) whether opposing counsel, the public, or the press is illegitimately motivated.

Megless, 654 F.3d at 409 (citing *Provident Life*, 176 F.R.D. at 467).

Each of the relevant *Provident Life* factors support Plaintiff's Motion.

(1) The extent the litigant's identity has been kept confidential.

John Doe's identity has been kept as confidential in this litigation. See Compl. ¶ 9: "Plaintiff is appearing here under a pseudonym." Plaintiff has maintained his anonymity throughout the Complaint.

(2) The basis on which disclosure is feared or avoided, and its substantiality.

By filing this motion, Doe is seeking to maintain his confidential information as confidential. The public identification of Doe as a transgender male Medicaid recipient seeking Gender Confirmation Surgery would attach a significant stigma to Doe under his public name and cause him severe harm, as well as disclose the most intimate details of Doe's anatomy and mental state. Moreover, there is no general legal protection in

¹ The fifth factor, "[W]ill the claim be resolved on its merits if the litigant is denied the opportunity to proceed using a pseudonym, or will the litigant potentially sacrifice a potentially valid claim simply to preserve their anonymity?" is neutral as there is no such indication by Plaintiff.

Pennsylvania against trans discrimination in employment, and he believes, based upon his experience, that disclosure of his involvement in this matter will harm him economically as well. (*See generally* Doe Declr. at paras. 5-10.)

(3) The magnitude of the public interest in maintaining the litigant's confidentiality.

Unfortunately, in our society, trans people are stigmatized. The abuse they are subjected to ranges from mocking and harmful comments in the media, to estrangement, suicide and murder. (*See, e.g., Injustice At Every Turn, A Report of the National Transgender Discrimination Survey*, available at http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf: Ninety percent of transgender and gender nonconforming people report harassment, discrimination and mistreatment on the job, and the injustices they face have devastating economic and personal consequences.) As in *Provident Life*, there is public interest in preventing further stigmatization of trans people and in fact it is in the public interest as well to protect Plaintiff's identity to avoid deterring trans people from proceeding in court to vindicate their rights.

The Second Circuit has reasoned that “[t]he Constitution does indeed protect the right to maintain confidentiality of one’s transsexualism...transsexualism is [an] unusual condition that is likely to provoke both an intense desire to maintain one’s medical confidentiality, as well as hostility and intolerance from others.” *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999). See also the Third Circuit in *Doe v. Delie*, 257 F.3d 309, 315-16 (3d Cir. 2001) (Privacy of health matters of trans inmate constitutionally protected.)

(4) Whether, due to purely legal issues, there is an atypically weak public interest

in knowing the litigant's identity.

This matter concerns purely legal issues. The Complaint has three counts, all grounded in unlawful discrimination: whether the Defendant's actions in administering the Commonwealth's ban on medically necessary treatment of Medicaid eligible people with a GD diagnosis are unlawful. Plaintiff's personal identity is not relevant to this matter. Any public interest in this case is not on Plaintiff's identity but, rather, on the legal issues at the heart of this matter.

(6) Whether the litigant has illegitimate ulterior motives.

Plaintiff's motives are entirely legitimate: to be provided with medically necessary health care through Pennsylvania's Medicaid program.

The Other *Provident Life* Factors

None of the relevant factors disfavoring anonymity are present here. There is no universal public interest in accessing this litigant's identity; nothing weighs strongly towards knowing Plaintiff's identity, and no other identified parties are illegitimately motivated to the best of Plaintiff's knowledge. Plaintiff is not a public figure and disclosure of his identity would not further the public interest.

C. Conclusion

All the relevant *Provident Life* factors favor anonymity in this matter. None of the relevant factors disfavoring anonymity are present here. There is no universal public interest in accessing this litigant's identity; nothing weighs strongly towards knowing Plaintiff's identity, and no other identified parties are illegitimately motivated to the best of Plaintiff's knowledge.

Accordingly, Plaintiff John Doe respectfully requests the Court grant his request

for anonymity in this matter.

Date: February 17, 2016

Respectfully Submitted,

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Counsel for Plaintiff John Doe

EXHIBIT A

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Defendant.	:	
	:	

**DECLARATION OF PLAINTIFF JOHN DOE IN SUPPORT OF
PLAINTIFF'S MOTION TO PROCEED IN ANONYMITY**

1. I am the Plaintiff in the above captioned matter.
2. I am transgender (or "trans" or transsexual".)
3. I am a Medicaid recipient residing in Delaware County, Pennsylvania. I am 30 years old and have received Medicaid benefits since 2013.
4. I support myself with Supplemental Security Disability Income and SNAP assistance.
5. Throughout my life I have been estranged from family and friends because I am trans.
6. Throughout my life, I have been insulted, isolated and assaulted for being trans.
7. I fear that disclosure of my condition in the present matter, as well as details of my most personal health matters, will harm me even more in the future.

8. Based on my life to date, I fear that disclosure of my personal identity in this matter will cause me severe harm because of society's discrimination against trans people.

9. Based on my life to date, I fear disclosure of the relief I seek in a public manner, as such disclosure will cause me severe harm.

10. I am seeking a graduate degree in special education and am certified to teach special education in Pennsylvania. Based on my life to date, I fear disclosure of my trans condition and the relief I seek, will severely harm my prospects of employment as a teacher in Pennsylvania.

All statements made herein of my own knowledge are true and to the best of my knowledge and belief, all statements made on information and belief are believed to be true; and I make these statements with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

February 17, 2017


JOHN DOE