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

PEARL MARION	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 96-7092
	:	
	:	
CITY OF PHILADELPHIA, DANIEL PLASKY, DREW MIHOCKO, RICHARD ROY, MARY ALLEGRA, RAYMOND STANIEC, RICHARD WILLIAMS, THOMAS DAY, JOSEPH GALANTE, WILLIAM WANKOFF, BRUCE APTOWICZ, LAUREEN BOLES, DANIEL AFLICK, RAYMOND DEFELICE, ANTHONY ARCE, M.D.	:	
	:	
Defendants.	:	

MEMORANDUM-ORDER

Presently before the Court is defendant Anthony Arce, M.D.'s Motion for Summary Judgment. Also before the Court are plaintiff's pro se Opposition to Defendant Arce's Motion for Summary Judgment and Plaintiff's Supplemental Response in Opposition to Defendant Arce's Motion for Summary Judgment, in which plaintiff is represented by counsel.

Summary judgment is properly granted to the moving party if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A dispute

regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). Once the moving party has satisfied this requirement, the burden shifts to the nonmoving party to present evidence that discloses a genuine issue for trial. Id. at 324, 106 S. Ct. at 2553; Fed.R.Civ.P. 56(e).

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). In deciding a motion for summary judgment, all reasonable inferences and any ambiguities should be drawn in favor of the party against whom judgment is sought. American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995). Additionally, the substantive law controlling the case will determine those facts that are material for the purposes of summary judgment. Anderson, 477 U.S. at 248, 106 S. Ct. at 2510.

In the instant case, in counts III and IV of her amended complaint, plaintiff alleges claims under 42 U.S.C. §§ 1983 and 1985 against Dr. Arce. At counts VI, VIII, IX, X, XI, and XII of her amended complaint plaintiff alleges state law claims against Dr. Arce for breach of a confidential relationship, invasion of privacy, civil conspiracy, and intentional infliction of emotional distress.

Count VI alleges a state common law claim for breach of duty of confidentiality against Arce. Plaintiff contends that Dr. Arce had a duty arising out of the patient-physician relationship not to disclose confidential medical information to plaintiff's employer. In Pennsylvania, where an employer sends an employee to a physician to undergo an employer-mandated medical examination, no confidential patient-physician relationship is created between the physician and the employee. Tomko v. Marks, 602 A.2d 890, 891-92 (Pa. Super. Ct. 1992). Moreover, even if such a duty existed, Pennsylvania does not recognize a cause of action for "breach of confidentiality" arising from that duty. Moses v. McWilliams, 549 A.2d 950, 953, 961 (Pa. Super. Ct. 1988), appeal denied, 558 A.2d 532 (Pa. 1989). Rather, a claim alleging a breach of the "patient-physician relationship" based on the physician's disclosure of information is actually a claim for "invasion of privacy." Coulter v. Rosenblum, 682 A.2d 838, 840 (Pa. Super. Ct. 1996). Thus, like counts VIII, IX and X of the amended complaint, count VI also alleges a claim for invasion of privacy.[1]

Here, the Court notes that the plaintiff concedes to defendant Arce's assertion that the state law invasion of privacy claims are barred by the applicable one-year statute of limitations. (Pl.'s Suppl. Resp. In Opp'n to Def. Arce's Mot. For Summ. J., at 2 n.1.) See 42 Pa.Cons.Stat.Ann. § 5523(1). Thus, the Court will grant judgment in favor of defendant Arce and against plaintiff Marion as to counts VI, VIII, IX, and X.

With respect to Count III, defendant Arce's motion for summary judgment

[1] Count VIII of the amended complaint asserts an invasion of privacy claim for "intrusion on seclusion." Count IX asserts an invasion of privacy claim for "public disclosure of private facts." Count X asserts an invasion of privacy claim for "false light." (Pl.'s First Amended Complaint, at 31-32, ¶¶ 156-67.)

asserts that there is no evidence to suggest that he 1) was a state actor acting under color of law, or 2) that he violated plaintiff's civil rights by performing an employer-ordered evaluation and then reporting back to the employer. In support of his motion, however, Arce has not met his burden pursuant to Fed.R.Civ.P. 56(c) of demonstrating that no genuine issue exists as to the material facts.

In her response to Arce's motion, plaintiff's new counsel requests that the Court deny Arce's motion for Summary Judgment without prejudice so that plaintiff may complete the depositions of the city employee defendants. Because the affidavits or depositions of the city defendants -- not to mention the deposition or affidavit of Dr. Arce, himself -- may provide the factual evidence necessary to determine if Arce was a state actor, and if he deprived plaintiff of a constitutionally protected right for the purposes of section 1983 liability, I will dismiss the defendant's motion without prejudice as to count III so that the depositions of the city employee defendants may be completed.

With respect to Count IV, which alleges a violation of section 1985, there is also an insufficient record before the Court to establish whether or not Arce was involved in an alleged conspiracy to deprive plaintiff of some constitutionally protected right. Although plaintiff has not established the existence of a genuine issue of material fact here in response to defendant's motion, the defendant's motion has not met its initial burden of demonstrating that no genuine issue of material fact exists either. Lacking the affidavits or depositions of the city defendants -- not to mention the deposition or affidavit of Dr. Arce, himself, I will dismiss the defendant's motion without prejudice as to count IV so that the depositions of the city employee defendants may be completed.

Count XI alleges a state law claim of civil conspiracy against the defendants, including Arce. Defendant supports his motion for summary judgment with the assertion that "plaintiff has set forth no facts to suggest that Dr. Arce made any agreement to interfere with any constitutional right of plaintiff, nor that he shared any class based animus towards women." (Def.'s Mot. For Summ. J., at 16.) This alone is not sufficient to meet his burden on summary judgment of establishing the absence of a genuine issue of material fact. Moreover, plaintiff states in her own deposition and Response to Interrogatories of Defendant Arce Directed to Plaintiff, that Dr. Arce already knew details of her disputes with her co-workers and supervisors before she told him about them when she went for her evaluation on October 7, 1994. (See Id. Ex. "G," at 148, 156; Ex. "E," at 2, ¶ 1(d).) Accordingly, I will dismiss the defendant's motion without prejudice as to Count XI until the depositions of the city employee defendants have been completed.

Count XII asserts a state law claim of intentional infliction of emotional distress against the defendants including Dr. Arce. In arguing for summary judgment, defendant states that there is nothing presented to support a conclusion that Arce's "conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (Def.'s Mot. For Summ. J., at 17.)

As defendant has not provided any support pursuant to Fed.R.Civ.P. 56(c) & (e) to establish the absence of a genuine issue as to whether Arce's alleged conduct is sufficiently outrageous to support a claim for intentional infliction of emotional distress,

and as plaintiff has requested additional time in which to complete discovery, defendant's motion for summary judgment will be dismissed without prejudice.

An appropriate order follows.

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RICHARD ROY, MARY ALLEGRA,	:	
RAYMOND STANIEC, RICHARD	:	
WILLIAMS, THOMAS DAY, JOSEPH	:	
GALANTE, WILLIAM WANKOFF,	:	
BRUCE APTOWICZ, LAUREEN	:	
BOLES, DANIEL AFLICK, RAYMOND	:	
DEFELICE, ANTHONY ARCE, M.D.	:	
	:	
Defendants.	:	

ORDER

AND NOW on this 28th Day of July, 1998, for all of the reasons set forth in the accompanying memorandum, it is HEREBY ORDERED that defendant Anthony Arce's Motion For Summary Judgment is GRANTED IN PART as follows:

1) Defendant's Motion for Summary Judgment is GRANTED as to Counts VI, VIII, IX, and X of the complaint; and

2) Defendant's Motion is DISMISSED without prejudice to either party moving for Summary Judgment after the conclusion of discovery, as to Counts III, IV, XI, and XII of the complaint.

It is further ORDERED that, after the conclusion of discovery, either party may move to reinstate the present motion for summary judgment by letter request provided that such request is properly served upon opposing counsel. Moreover, all discovery in this matter shall be completed by August 31, 1998. Finally, it is ORDERED that this matter be placed in the civil trial pool on October 1, 1998, as the first case listed for trial.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.