

Gause, John P

From: Gause, John P
Sent: Wednesday, March 26, 2008 12:09 PM
To: [REDACTED]
Cc: [REDACTED], Ryan, Patricia
Subject: [REDACTED]

[REDACTED],
Pat asked me to respond to your question about the basis for this case proceeding anonymously.

In deciding whether to use a pseudonym in an Investigator's Report, the Commission uses the same standard the courts use in deciding whether to allow parties to proceed anonymously. Factors include the following: "[W]hether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party; and, relatedly, the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously." *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993).

Here, although Complainant did not request it, it was felt that using a pseudonym was appropriate in light of the highly sensitive nature of Complainant's HIV status. Maine law prevents the disclosure of HIV test results. 5 M.R.S.A. § 19203. Moreover, revealing Complainant's identity runs the risk of future employment discrimination against him. After all, he alleges discrimination based simply on his revealing his HIV status to Respondent. It was also not felt that there would be any unfairness to Respondent. It is noteworthy that courts have frequently allowed plaintiffs with HIV to proceed anonymously because of the highly sensitive nature of their position. *See Roe v. City of New York*, 151 F.Supp.2d 495, 510 (S.D.N.Y. 2001) (citing cases). Admittedly, that is not always the case. *See Doe v. Bell Atlantic Business Systems Services, Inc.*, 162 F.R.D. 418, 422 (D.Mass. 1995).

Please let me know if you have any additional questions or concerns.

John

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