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Date: November 26, 2014
Time: 9:30 a.m.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

CHRISTOPHER J. HUPY, an individual,

Plaintiff,

vs.

**DOUGLAS BARTHOLOMEW, an
individual,**

Defendant.

NO. 14-2-05926-2

**DEFENDANT'S MOTION TO
SEAL COURT RECORD
PURSUANT TO GR 15**

I. RELIEF REQUESTED

Defendant Douglas Bartholomew moves this Court for an order sealing the complete court files and records in this case pursuant to GR 15(c).

II. STATEMENT OF FACTS

Plaintiff Christopher Hupy filed this action against Bartholomew on 08/29/14. Hupy claims that Bartholomew was at one time his healthcare provider. He alleges that Bartholomew admitted in open court to disclosing his protected healthcare information "hundreds of times." Hupy brings this action under chapter 70.02 RCW, the Uniform Healthcare Information Act.

DEFENDANT'S MOTION TO SEAL COURT
RECORD PURSUANT TO GR 15 - 1

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1 Because this action involves unfounded allegations of improper disclosure of protected
2 healthcare information, Bartholomew brings this motion in an abundance of caution.
3 Bartholomew has also filed a preliminary Answer, but is unable to substantively respond to
4 Hupy's allegations without arguably exposing himself to further allegations of unauthorized
5 disclosure of healthcare information. Because these Court proceedings are public, Bartholomew
6 is understandably hesitant to even confirm or deny that he provided healthcare to Hupy. This
7 prudent cautionary approach to his defense, given the subject matter of this action, has impeded
8 his opportunity to defend himself against these allegations.

9 II. STATEMENT OF ISSUES

10 1. Should this Court seal all court files and records in this action pursuant to GR 15
11 where the accusations involve unauthorized disclosure of protected healthcare information,
12 against which Bartholomew cannot meaningfully defend himself in open court without arguably
13 exposing himself to further related accusations?

14 IV. EVIDENCE RELIED UPON

15 Bartholomew relies upon this Court's complete files and records in this case.

16 V. LEGAL AUTHORITY

17 Former RCW 70.02.020(1) (2005) provided:¹

18 Except as authorized in RCW 70.02.050, a health care provider, an
19 individual who assists a health care provider in the delivery of
20 health care, or an agent and employee of a health care provider
21 may not disclose health care information about a patient to any
22 other person without the patient's written authorization. A
23 disclosure made under a patient's written authorization must
24 conform to the authorization.

25 ¹ The 2005 version of the statute was in effect during the time period at issue in this case. Section 1 is largely unchanged, except the current version begins "[e]xcept as authorized elsewhere in this chapter" rather than limiting the exceptions to RCW 70.02.050.

1 Without admitting any of the allegations in the Complaint, including that he provided healthcare
2 to Hupy, Bartholomew is caught in a Catch-22. He can meaningfully defend himself in this
3 action and risk further allegations that he has arguably disclosed protected healthcare information
4 in these open court proceedings. Alternatively, he can ensure that no protected healthcare
5 information is disclosed, which would potentially mean foregoing any defense to the underlying
6 allegations. Such a legal conundrum threatens to deprive Bartholomew of his due process rights.

7 Instead of requiring Bartholomew to choose between two equally untenable courses of
8 action, this Court has another option. GR 15(c)(1) provides that, “[i]n a civil case, the court or
9 any party may request a hearing to seal or redact the court records.” Pursuant to GR 15(c)(2):

10 After the hearing, the court may order the court file and records in
11 the proceeding, or any part thereof, to be sealed or redacted if the
12 court makes and enters written findings that the specific sealing or
13 redaction is justified by identified compelling privacy or safety
14 concerns that outweigh the public interest in access to the court
15 record.

16 The rule lists a number of privacy or safety concerns that will be weighed against the public
17 interest, including “[a]nother identified compelling circumstance exists that requires the sealing
18 or redaction.” CR 15(c)(2)(F).

19 The Washington State Supreme Court in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30,
20 640 P.2d 716 (1982), recognized that, in some cases, sealing a court record is necessary to
21 protect a defendant’s right to a fair trial. The court adopted a five-step framework for
22 determining whether sealing is appropriate in criminal cases. In *Hundtofte v. Encarnación*, 181
23 Wn.2d 1, 7, 330 P.3d 168 (2014), a majority of the justices applied the *Ishikawa* factors to a civil
24 action to seal records. *See id.* (Owens, J., lead opinion, and González, J., dissenting).

1 Under the first factor, the party seeking to seal the records “must make some showing of
2 the need therefor.” *Ishikawa*, 97 Wn.2d at 37. Second, “[a]nyone present when the closure
3 [and/or sealing] motion is made must be given an opportunity to object.” *Id.* at 38. Third, the
4 court and parties must “analyze whether the requested method for curtailing access would be
5 both the least restrictive means available and effective in protecting the interests threatened.” *Id.*
6 Fourth, “[t]he court must weigh the competing interests of the [party seeking the redaction] and
7 the public” and must consider alternative methods. *Id.* (internal citation omitted). Fifth, the
8 order must be no broader than necessary to adequately protect the interests at stake. *Id.* Here,
9 the balancing factors weigh in favor of sealing the court records in this case.

10 Bartholomew has shown the need for sealing the records. As noted, because this case
11 involves accusations that he improperly disclosed medical records, Bartholomew cannot
12 adequately defend himself without arguably exposing himself to further accusations of improper
13 disclosure. Hupy has the opportunity to respond to this motion to seal. Sealing the court records
14 in this action is the least restrictive means to ensure that none of Hupy’s private healthcare
15 information is exposed to the public. The public has no legitimate interest in learning the details
16 of Hupy’s private medical history. Finally, the order sealing these proceedings can be narrowly
17 tailored to ensure that Hupy’s private healthcare information is protected and Bartholomew will
18 be protected from exposure to further accusations of improper disclosure.

19 Here, ensuring that Bartholomew is protected from further accusations of improperly
20 disclosing protected healthcare information in defense of this action is a compelling
21 circumstance which justifies sealing the court files and records. Because this action was
22 instituted to ensure the privacy of Hupy’s healthcare information, sealing the record would
23

1 further promote this goal. Moreover, sealing the record would guarantee Bartholomew a full and
2 fair defense against Hupy's accusations of improper disclosure.

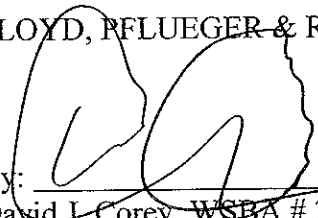
3 **VI. CONCLUSION**

4 For the foregoing reasons, this Court should enter an Order sealing the court files and
5 records in this action.

6 A Proposed Order is attached.

7
8 DATED this 3 day of November, 2014.

9 FLOYD, PFLUEGER & RINGER, P.S.

10 
11 By: _____
12 David J. Corey, WSBA # 26683
13 Of Attorneys for Defendant
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24 DEFENDANT'S MOTION TO SEAL COURT
RECORD PURSUANT TO GR 15 - 5


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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 6th day of Nov, 2014, I caused to be served a true and correct copy of the foregoing, via legal messengers, or via U.S. Mail by depositing the same in an envelope, postage pre-paid thereon, addressed to the following:

Christopher J. Hupy
13222 29th Avenue SE
Mill Creek, WA 98012



Linnea Butler *Seija Anderson*
Legal Assistant to ~~David J. Corey~~

DEFENDANT'S MOTION TO SEAL COURT
RECORD PURSUANT TO GR 15 - 6

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