

FILED
05-03-2019
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,
Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER;
MIKE PALECEK;
WRONGS WITHOUT WREMEDIES, LLC;
Defendants.

PLAINTIFF'S MOTION TO SEAL ZIMMERMAN AFFIDAVIT

NOTICE

To: All Counsel and Parties of Record

PLEASE TAKE NOTICE that at a time and date to be set by this Court, Plaintiff Leonard Pozner, by his attorneys, will bring on the following Motion to Seal.

MOTION

Plaintiff Leonard Pozner, through his attorneys, hereby moves this Court to seal Exhibits D, E, and H to the Affidavit of Jacob Zimmerman in Support of Plaintiff's Motion for Summary Judgment. This Affidavit and all supporting exhibits were originally filed under temporary seal on April 30, 2019, due to Plaintiff's counsel's understanding, practice, and procedure, to file affidavits and exhibits as a combined document in the State of Wisconsin eFile System. Pursuant to this Court's letter dated May 2, 2019, Plaintiff is withdrawing his Motion to Seal that was filed on May 2, 2019, re-filing the Affidavit of Jacob Zimmerman and supporting exhibits,

and is tailoring this renewed Motion to Seal to address concerns regarding the blanket sealing of documents.

Under the State of Wisconsin eFile System, documents to be filed under seal are temporarily filed under seal until the Court grants a motion applying a permanent seal to the document. Wis. Stat. § 801.18(14)(d). Accordingly, Plaintiff is filing this motion pursuant to Wis. Stat. §§ 801.18(14) & 801.21(2), and requests this Court grant this Motion to Seal Exhibits D, E, and H to the Affidavit of Jacob Zimmerman, permanently.

This Motion is made on the grounds that information contained in Plaintiff's summary judgment pleadings contain protected and confidential medical information, which Plaintiff is designating Confidential under the proposed Confidentiality Order, filed May 2, 2019, pursuant to this Court's oral Order entered April 26, 2019 (Doc. #99).

Along with his brief in support of his motion for summary judgment, Plaintiff is submitting several documents in the Affidavit of Jacob Zimmerman, with supporting exhibits, which include the confidential medical information of Noah Pozner, who was a minor and is not a party to this lawsuit but which information is nonetheless relevant to Plaintiff's claims. Wisconsin courts have concluded that such private medical information is confidential, Wis. Stat. § 146.82(1), and is appropriate for filing under seal. *See In re Disciplinary Proceedings Against Erspamer*, 2011 WI 85, ¶ 49 n.8, 337 Wis. 2d 1, 801, N.W.2d 760 (accepting that investigative reports containing attorney's mental health were filed and maintained under seal); *see also*

Wis. Stat. § 801.18(14) (“No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.”). Because Exhibits D, E, and H to this Affidavit contain confidential medical information, Plaintiff respectfully requests this Court seal Exhibits D, E, and H. Wis. Stat. §§ 801.18(14), 801.21(2).

Plaintiff’s counsel has (1) sent courtesy copies of the unsealed Affidavit to Defendants and (2) offered Defendants the opportunity to inspect these documents in person.

WHEREFORE, Plaintiff moves to protect the confidential medical information and privacy of non-party individuals by filing Exhibits D, E, and H to the Affidavit of Jacob Zimmerman in Support of Motion for Summary Judgment under permanent seal.

Dated this 3rd day of May, 2019.

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Electronically signed by Marisa L. Berlinger

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