

Via U.S.P.S.

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February 9, 2012

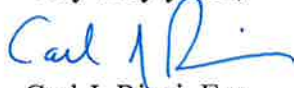
Joseph V. Cavanagh, Jr., Esq.  
Stephen J. Reid, Jr., Esq.  
Blish & Cavanagh, LLP  
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Re: Timothy J. Kinsella, M.D. v. Amelia L. Weber (a/k/a Amy L. Weber), John/Jane  
Doe ## 1-5 / C.A. 11-207S

Dear Attorneys Cavanagh and Reid:

Enclosed please find a copy of (i) Defendant Amelia Weber's Objection to Plaintiff's Motion to Seal Portions of Amended Complaint and (ii) Defendant Amelia Weber's Memorandum in Support of Objection to Plaintiff's Motion to Seal Portions of Amended Complaint, both of which have been filed with the United States District Court for the District of Rhode Island.

Very truly yours,



Carl J. Ricci, Esq.  
Attorney for Amelia Weber

CJR:cjr

Enclosures

CC: Robert D. Wieck, Esq. (Via email w/o enc.)  
David H. Rich, Esq. (Via email w/ enc.)

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

TIMOTHY J. KINSELLA, M.D. )  
Plaintiff )  
v. )  
AMELIA L. WEBER (a/k/a AMY L. WEBER), )  
JOHN/JANE DOE ##1-5 )  
Defendants )

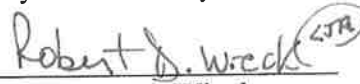
**RECEIVED**  
Civil Action No. CA11-207S-LDA  
FEB 09 2012  
**U.S. DISTRICT COURT**  
**DISTRICT OF R.I.**

**DEFENDANT AMELIA WEBER'S OBJECTION TO PLAINTIFF'S  
MOTION TO SEAL PORTIONS OF AMENDED COMPLAINT**

For the reasons set forth in the accompanying Memorandum, Defendant Amelia L. Weber objects to Plaintiff's Motion To Seal Portions of Amended Complaint ("Motion") and respectfully request that this Court deny the Motion in its entirety.

AMELIA WEBER,

By Her Attorneys

  
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**CERTIFICATE OF SERVICE**

I, hereby certify that on this 9<sup>th</sup> day of February, 2012 the within document was served via first class mail, postage prepaid, upon the following:

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Robert D. Wieck *(signature)*  
Robert D. Wieck

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

FEB 09 2012

TIMOTHY J. KINSELLA, M.D. )  
Plaintiff )  
v. )  
AMELIA L. WEBER (a/k/a AMY L. WEBER), )  
JOHN/JANE DOE ##1-5 )  
Defendants )

**U.S. DISTRICT COURT**  
**DISTRICT OF R.I.**  
Civil Action No. **CA11-2078-LDA**

**DEFENDANT AMELIA WEBER'S MEMORANDUM IN SUPPORT OF OBJECTION**  
**TO PLAINTIFF'S MOTION TO SEAL PORTIONS OF AMENDED COMPLAINT**

**INTRODUCTION**

Plaintiff Timothy J. Kinsella, M.D. ("Plaintiff") is asking this Court to break its well-reasoned rule that "documents filed with a court in connection with a pending case are public records" in reliance only on the specious proposition that a pleading he filed, in a suit he brought, will somehow harm him. See Corvello v. New England Gas Co., Inc., 2008 WL 5245331, at \*6 (D.R.I. Dec. 16, 2008) (denying motion to seal settlement agreement). As courts in the First Circuit have established time and time again, "[t]he mere fact that judicial records may reveal potentially embarrassing information is not in itself sufficient reason to block public access." Siedle v. Putnam Investments, Inc., 147 F.3d 7, 10-11 (1st Cir. 1998). Especially given that the statements Plaintiff seeks to seal are in his Amended Complaint making clear his contention that those statements are false, he cannot credibly claim that he will be harmed in any respect if this Court's rule against sealing judicial records remains intact. "Trials after all commonly generate bad publicity . . . but the injury is the price paid for open trials." Poliquin v. Garden Way, Inc., 989 F.2d 527, 533 (1st Cir. 1993). For these reasons, set forth in greater detail below, this Court should deny Plaintiff's Motion to Seal Portions of Amended Complaint.

## FACTS

The Plaintiff's proposed Amended Complaint is replete with falsehoods, none of which are particularly germane to the issues presented by the Plaintiff's motion. However, it remains noteworthy that the Plaintiff's proposed Amended Complaint seeks to assert claims against Ms. Weber for, among other things, letters and emails she did not publish or send and statements made on a website which has remained unchanged, operating and functional since 2007, well beyond any conceivable statute of limitations. Moreover, and despite the arguments advanced in the Defendant's Motion to Dismiss, the Plaintiff's proposed Amended Complaint remains fatally defective in that it does not attach or even quote directly from the alleged defamatory statements, nor does it even identify the author/publisher of the alleged defamatory statement. Phantom Touring, Inc. v. Affiliated Publications, 953 F.2d 724, 728 n.6 (1st. Cir.), cert. denied, 504 U.S. 974 (1992) ("a defendant is entitled to knowledge of the precise language challenged as defamatory, and the plaintiff therefore is limited *to its complaint* in defining the scope of the alleged defamation.").

## ARGUMENT

### **I. This Court Has A General Rule Against Sealing Judicial Records.**

This Court recently reconfirmed the bedrock legal principle that "[i]t is well established that, as a general rule, documents filed with a court in connection with a pending case are public records; that proceedings conducted in a case are open to the public and that the evidence in such proceedings should be presented in open court." Corvello, 2008 WL 5245331, at \*6; see Nixon v. Warner Commc'n Inc., 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); Siedle, 147 F.3d at 10 (explaining "that public monitoring of the

judicial system fosters the important values of quality, honesty and respect for our legal system."); F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 412-13 (1st Cir.1987) (referring to presumption of public's right to see "documents which properly come before the court in the course of an adjudicatory proceeding"). There is a sound policy undergirding this rule: "Public access to judicial records and documents allows the citizenry to 'monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system.'" F.T.C., 830 F.2d at 410-11 (upholding district court's release order of sworn personal financial statement submitted to the Federal Trade Commission)(quoting In the Matter of Continental Illinois Securities Litigation, 732 F.2d 1302, 1308 (7<sup>th</sup> Cir. 1984)); see Poliquin v. Garden Way, Inc., 989 F.2d 527, 533 (1st Cir. 1993) ("Open trials protect not only the rights of individuals, but also the confidence of the public that justice is being done by its courts in all matters, civil as well as criminal.")(citation omitted). For that reason "[o]nly the most compelling reasons can justify non-disclosure of judicial records." F.T.C., 830 F.2d at 410 (quoting In re Knoxville News-Sentinel Co., 723 F.2d 470, 476 (6<sup>th</sup> Cir. 1983).

## **II. Plaintiff Has Failed to Offer A "Compelling Reason" to Break This Court's Rule Against Sealing Judicial Records.**

Plaintiff has failed to identify a sufficiently "compelling reason" to overcome this Court's rule against sealing public records. See F.T.C., 830 F.2d at 410-11; Corvello, 2008 WL 5245331, at \*6. The only rationale he offers is an unsupported allegation of vague, generalized harm he claims he will suffer as a result of bringing a lawsuit against Ms. Weber. See Memorandum in Support of Motion to Seal Portion of Amended Complaint ("Memorandum"), at 3-5. That undefined concern about "damage to Plaintiff's reputation, his trade, and his business relationship," Memorandum, at 5, does not justify jettisoning the well-reasoned policy concerns behind the rule that judicial records be open to the public. See F.T.C., 830 F.2d at 412-13;

Poliquin, 989 F.2d at 533. Plaintiff has failed to identify a single case in which a court has sealed judicial records solely because of that purported concern, and there is a very good reason he has not done so: such a case does not exist. Indeed, courts including the First Circuit Court of Appeals have explained that contrary to Plaintiff's arguments "[t]he mere fact that judicial records may reveal potentially embarrassing information is not in itself sufficient reason to block public access." Siedle, 147 F.3d at 10–11 (finding that existence of attorney-client information was a sufficient basis on which to seal documents)(citation omitted).

In addition, First Circuit courts have made clear that generalized privacy concerns like those Plaintiff alleges do not justify hiding judicial records from the public, especially when the party moving to seal the at issue documents voluntarily offered those documents. F.T.C., 830 F.2d at 412–13; Poliquin, 989 F.2d at 533. In F.T.C. v. Standard Fin. Mgmt. Corp., for example, the First Circuit Court of Appeals found that non-specific privacy concerns, there about financial records, were not sufficiently compelling to justify "cloaking the documents in secrecy." 830 F.2d at 412–13. The First Circuit found it especially relevant that, as is the case here, the moving parties themselves voluntarily chose to submit the documents, because where the moving parties seek to "reap[] the intended benefit of that submission, [they] cannot now plausibly argue that some general notion of fairness . . . requires the documents to be locked away." Id. at 412. Further, the generalized harm the moving parties alleged they would suffer would never be enough to overcome the rule that judicial records are open to the public. Instead, the First Circuit found that sealing judicial records because of privacy concerns is not proper "absent a demonstration that the [moving party] will likely suffer specific, severe harm as a result of disclosure." Id. Here, Plaintiff does not even try to make such a demonstration.

To the extent that Plaintiff's alleged privacy concerns amount to an argument that his business will suffer as a result of the claims in his Amended Complaint, such a contention does not come close to outweighing the public interest in maintaining open judicial records, as the First Circuit Court of Appeals made clear in Poliquin v. Garden Way, Inc. 989 F.2d at 533. There, the court denied a motion to seal interrogatory answer excerpts, because that motion only "amount[ed] to a garden-variety claim that the company's image among customers will be damaged through the misuse or distortion of . . . accident claims." 989 F.2d at 533. As the First Circuit noted, "[t]rials after all commonly generate bad publicity . . . but the injury is the price paid for open trials." Id. Therefore, given the public's interest in access to judicial records, absent extraordinary circumstances "commercial embarrassment is not a 'compelling reason'" sufficient to overcome the presumption of disclosure. Id. Like the moving party in Poliquin, Plaintiff is purporting to attempt to protect his business reputation, but that potential bad publicity is simply "the price paid for open trials." See Id. It also flies directly in the face of his allegation that his reputation has already been damaged and does not amount to a reason for breaking away from the general rule against sealing judicial records.

### **III. This Court Cannot Become a So-Called "Vehicle for Improper Purpose" Where Plaintiff Brought This Suit On His Own.**

Hewing to its rule that judicial records are public documents cannot make this Court a "vehicle for improper purpose." Plaintiff, however, misapplies dicta in Nixon v. Warner Communications, Inc. to claim that merely by declining to seal Plaintiff's own Amended Complaint it would become such a vehicle. 435 U.S. at 602–3 (holding that a decision on the motion to seal was unnecessary because Congress established a procedure for the review and dissemination of the information at issue). In fact, the Court in Nixon suggested only that it may be appropriate to seal judicial records where a court plays an active role in subpoenaing the



documents at issue and there are grave public policy concerns at stake, such as ensuring that scandal does not unnecessarily attach to a sitting President:

Underlying each of petitioner's arguments is the crucial fact that respondents require a court's cooperation in furthering their commercial plans. The court—as custodian of tapes obtained by subpoena over the opposition of a sitting President, solely to satisfy “fundamental demands of due process of law in the fair administration of criminal justice,”—has a responsibility to exercise an informed discretion as to release of the tapes, with a sensitive appreciation of the circumstances that led to their production.

Id. (citation omitted).

That dicta has no bearing on Plaintiff's Motion to Seal Portions of Amended Complaint. This Court has not subpoenaed the documents at issue, is not acting as custodian over them, and policy considerations such as obtaining a subpoena over the opposition of a sitting President are not at issue. To the contrary, Plaintiff filed the Amended Complaint, the Court did not take any active role in drafting and filing the Amended Complaint, and courts have consistently found that the only rationale Plaintiff offers for sealing the Amended Complaint is insufficient. See Id.; *infra* Part III.

#### **IV. Plaintiff Cannot Credibly Claim That His Own Amended Complaint Will Cause Him Harm.**

Even putting aside the above arguments, it is not credible that Plaintiff's own Amended Complaint can harm him. The entire point of his lawsuit is that Plaintiff claims the very statements he seeks to seal are not true, as would be clear to anyone who read the Amended Complaint. Indeed, in the three consecutive paragraphs immediately preceding the paragraph he seeks to seal, Plaintiff plainly alleges that the statements he seeks to seal are "false and defamatory." Amended Complaint, ¶¶8–10. Even if generalized privacy concerns could be a basis for overcoming the rule that judicial records are public documents, such purported concerns

would not justify a motion to seal here, because there is not even a credible risk of a speculative harm.

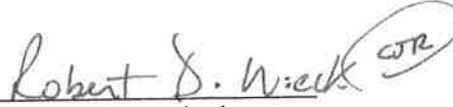
In this regard, the Plaintiff's request would unfairly prejudice both the public and Ms. Weber. On one hand, Dr. Kinsella has sued Ms. Weber in a public, unsealed Complaint alleging that he has suffered substantial harm and emotional distress based upon Ms. Weber's alleged outrageous and illegal misconduct. At the same time, he refuses to identify, and now seeks to seal, the exact nature of the alleged illegal conduct, allowing for members of the public to speculate and wonder about this conduct. Moreover, the gravamen of Dr. Kinsella's complaint is that Ms. Weber's alleged statements, which he makes clear in his Amended Complaint are false, have caused him public humiliation and damage to his reputation. It is these same words and conduct that Dr. Kinsella now refuses to identify and be subjected to public scrutiny. Even if some policy reason existed to seal his Amended Complaint, and Dr. Kinsella has done nothing to demonstrate a compelling policy concern, any unstated policy is overridden by Ms. Weber and the public's right and interest in having Mr. Kinsella's Complaint adjudicated as part of an open judicial process for the public's view. See Poliquin, 989 F.2d at 533 ("Open trials protect not only the rights of individuals, but also the confidence of the public that justice is being done by its courts in all matters, civil as well as criminal.").

### **CONCLUSION**

Ms. Weber respectfully requests that this Court deny Plaintiff's Motion to Seal Portion of Amended Complaint in its entirety.

AMELIA WEBER,

By Her Attorneys

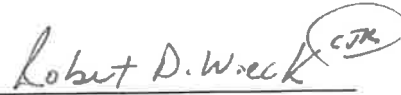
  
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(pro hac vice admission pending)

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