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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO ESPINOZA,
Petitioner,
v.
WARDEN, San Quentin State Prison,
Respondent.

No. 2:94-cv-1665 KJM DB

SEALED ORDER

Petitioner is a state prisoner proceeding through counsel with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before the court are petitioner’s counsel’s request to file a motion and related documents under seal, petitioner’s counsel’s motion to compel CDCR to provide counsel with information regarding petitioner’s health, and petitioner’s request for an extension of time to file a joint status report. This court addresses the latter request in a publicly-filed order. Below, this court addresses petitioner’s counsel’s request to file documents under seal and motion to compel CDCR to provide information.

This court has two concerns about petitioner’s counsel’s filings. First, while petitioner’s counsel (hereafter “counsel”) identifies only two requests, it appears from the submissions that counsel is making three. To summarize, they are: (1) a request to file under seal; (2) a motion to compel CDCR to provide counsel with health and other information upon counsel’s request; and (3) a motion for a protective order to prevent respondent from having access to any of the

1 documents provided to counsel by CDCR. Counsel shall confirm with the court that these are the
2 three things they are seeking.

3 With respect to counsel's request to file under seal, it appears that some, if not all, of the
4 information regarding petitioner's health referenced in counsel's motion has been made public.
5 (See ECF No. 280-6 at 59; ECF No. 292-1). Nonetheless, this court recognizes that petitioner is
6 entitled to a level of privacy over his health information and will issue a separate, public order
7 directing the Clerk to file the request and motions under seal.

8 This court's second concern is that counsel seeks to have both his motion to compel and
9 his motion for a protective order heard ex parte. Counsel appears to argue that ex parte
10 consideration is necessary because the motions contain private information about petitioner's
11 health and information protected by the attorney/client privilege or work product. As stated
12 above, it appears that the information provided regarding petitioner's health is already available
13 to respondent. If that is not the case, counsel shall so inform the court.

14 With respect to the privileges, counsel does describe some of the work done to attempt to
15 determine the status of petitioner's health and to attempt to communicate with him. Whether or
16 not that information is privileged or protected, this court does not find it necessary to counsel's
17 motions and finds it could be omitted. It is sufficient that counsel needs information about
18 petitioner's health and location in order to communicate with him. This court finds nothing
19 necessarily confidential about counsel's need to communicate with petitioner. In fact, respondent
20 could certainly be aware that counsel requested petitioner's health records from a prison officer
21 and that the officer told counsel a signed HIPAA release was necessary. And, should the court
22 order the provision of information, respondent would likely be aware that prison officers are
23 providing that information based on the court's order.

24 This court does not find any reason, at this time, to enter an order compelling the
25 provision of information without input from respondent. This is particularly true because counsel
26 appears to be asking this court to find petitioner is incompetent to execute a release of records.
27 Counsel does not explain why respondent should have no role in consideration of that issue.

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