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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   MICHAEL A. COX,   No. 2:04-CV-0065 MCE CKD

12   Petitioner,   DEATH PENALTY CASE

13   v.

14   WARDEN, San Quentin State Prison,   ORDER

15   Respondent.

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17   Petitioner requests that the April 15, 2015 declaration of investigator Dorothy Ballew,

18   submitted in support of petitioner's pending motion to perpetuate testimony, be filed under seal.[1]

19   Petitioner argues sealing is justified because the declaration contains private medical information

20   of non-parties. Petitioner relies primarily upon the Health Insurance Portability and

21   Accountability Act of 1996 ("HIPPA"). Respondent opposes the request because the medical

22   information contained in the declaration does not amount to "medical records" under HIPPA.

23   Ms. Ballew's declaration describes her conversations regarding the medical condition of a

24   mitigation witness and a juror.[2] While there is a presumption of public access to judicial records,

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[1] Pursuant to Local Rule 141, petitioner's request, respondent's opposition, and petitioner's reply
have all been submitted by e-mail. They will be ordered filed under seal.

[2] Ms. Ballew's declaration also describes learning of the death of juror Diane Conen. Petitioner
has included Ms. Conen's obituary as a publicly-filed exhibit to his motion so the court assumes
petitioner does not seek to keep this information confidential. (ECF No. 146-10.) It is noted,

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1 this presumption may be overcome by a showing of a "real and substantial" privacy interest.

2 Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey, 663 F.3d 1124, 1135-36 (10th Cir.

3 2011). Under Federal Rule of Civil Procedure 26(c)(1), the court may, upon a showing of good

4 cause, enter an order "to protect a party or person from annoyance, embarrassment, oppression, or

5 undue burden or expense." See Kamakana v. Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006)

6 (party must show good cause to justify sealing information relating to a non-dispositive matter).

7 A non-party's medical information is certainly the sort of private information that may be entitled

8 to protection. Eugene S., 663 F.3d at 1135-36 (sealing documents that included "the name of,

9 and/or personal and private medical information" of a non-party).

10   In the present case, the court finds the public interest in the medical information of the

11 non-parties described in petitioner's submitted declaration is minimal.[3] While the declaration

12 does not contain medical records, it contains a report of statements, or what amounts to

13 statements, by persons with knowledge of these non-parties' medical history. The court finds

14 good cause to seal Ms. Ballew's declaration.

15   Accordingly, IT IS HEREBY ORDERED as follows:

16   1. The Clerk of the Court is directed to file under seal the following documents:

17   petitioner's April 15, 2015 Request to Seal; respondent's April 24, 2015 Opposition;

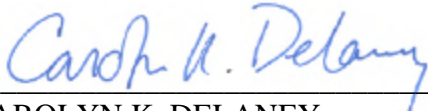18   and petitioner's April 27, 2015 Reply.

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23 however, that petitioner does not list Ms. Conen as one of the parties whose testimony he seeks to preserve.

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25 [3] In fact, the public interest is essentially non-existent at this point because neither of the non-parties described in Ms. Ballew's declaration appears to be included in petitioner's motion to

26 perpetuate testimony. The court is therefore puzzled by the inclusion of Ms. Ballew's declaration with petitioner's motion. The court notes that should petitioner seek to perpetuate the testimony

27 of any of the three people mentioned in Ms. Ballew's declaration, the identity, though not the medical information, of those people should be identified in a public filing.

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2. The Clerk is also directed to file under seal the April 15, 2015 Declaration of Dorothy Ballew.

Dated: May 5, 2015

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CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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