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Physical Therapy Board of California - DCA

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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION

13 JIMMY ST. CLAIR,
 14
 15 v.
 16 STAN SCHLACHTER,
 17
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2:13-cv-00804-KJM-EFB (TEMP)
JOINT STIPULATED PROTECTIVE ORDER

Plaintiff,
 Defendant,

20 **IT IS STIPULATED BY THE PARTIES, BY AND THROUGH THEIR**
 21 **RESPECTIVE COUNSEL, AND ORDERED BY THE COURT AS FOLLOWS:**

22 **A. CONFIDENTIAL MATERIAL SUBJECT TO THIS PROTECTIVE**
 23 **ORDER.**

24 In this action Plaintiff Jimmy St. Clair is suing Defendant Stan Schlachter for sexual
 25 assault. At the time of the alleged assault, Defendant Schlachter was licensed by Physical
 26 Therapy Board of California, which is a part of the California Department of Consumer Affairs
 27 (Board). At the time of the alleged assault, Defendant Schlachter was employed by Supplemental
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1 Health Care Services and provided services to Mule Creek State Prison (MCSP), California
2 Department of Corrections and Rehabilitation (CDCR) on a contract basis. This incident and
3 other incidents were investigated by the Board who prepared a confidential investigation report
4 documenting the result of the investigation. On or about March 9, 2015, Plaintiff St. Clair served
5 an updated subpoena for records on the Board, seeking to procure investigative files concerning
6 the Board's investigations into allegations against Defendant Schlachter made by himself, and
7 also by other patients. Plaintiff St. Clair filed a motion to compel compliance with the subpoena.
8 The Board opposed Plaintiff St. Clair's motion to compel compliance with the subpoena. On
9 May 23, 2016, the court ordered that Plaintiff St. Clair and the Board submit to the court a
10 mutually-drafted protective order. In addition it ordered that all documents responsive to the
11 subpoena, limited by relevance and privacy concerns, and subject to the protective order, shall be
12 produced to Plaintiff St. Clair.

13 **B. NEED FOR PROTECTION OF CONFIDENTIAL MATERIAL.**

14 The Board contends that the investigative report is protected by the official information
15 and deliberative process privileges. The Board asserts that maintaining confidentiality of the
16 investigative report is necessary to encourage witnesses to provide candid and truthful statements
17 and that the release of the information to inmates would endanger institutional safety by
18 disclosing the processes and procedures used to respond to inmate violence. Disclosure also
19 could inform inmates of the Board's investigatory techniques and could hamper future
20 investigations.

21 The Board maintains that the personnel file of Defendant Schlachter is protected by the
22 official information privilege, the right of privacy, under California Constitution Article I, section
23 1, Penal Code sections 832.5, 832.7, 832.8, Government Code section 6254, Civil Code sections
24 1798.24 and 1798.40, and California Code of Regulations Title, 15 section 3400. The Board
25 further maintains that the personnel files also are protected under California Evidence Code
26 section 1040, *et. seq.*, including section 1043. In addition, the Board asserts that the personnel
27 file of Defendant Schlachter is considered as confidential under California Code of Regulations,
28 title 15, section 3321, the disclosure of which to an inmate could: (1) endanger the safety of other

1 inmates and staff of the Board and or CDCR employees, or (2) jeopardize the security of the
2 institution.

3 The Board maintains that the medical records of Defendant Schlachter and other patient-
4 inmates within CDCR are protected by the right of privacy, under California Constitution,
5 Article I, section 1. The medical records contain identifying information and health information
6 pertaining to individuals other than Plaintiff and Defendant and pertains to events other than
7 interaction between Plaintiff and Defendant that is subject of this litigation.

8 The confidential material has been identified by the parties and is attached as Exhibit A.

9 **C. NEED FOR A COURT ORDER.**

10 In the course of this litigation, Plaintiff St. Clair has subpoenaed the investigative reports
11 prepared by the Board concerning investigation it performed concerning complaints by Plaintiff
12 St. Clair and other California inmates against Defendant Schlachter. Since the Board is not a
13 party to this litigation, a private agreement among the parties is not sufficient to protect the
14 Board's interests in maintaining the confidentiality of these investigative documents.

15 **D. CONDITIONS FOR RELEASE OF CONFIDENTIAL DOCUMENTS**

16 The Court orders the following to protect the confidentiality of the confidential documents
17 described above:

18 1. The provisions of this Protective Order apply to the confidential records and
19 information ("confidential material") designated by Plaintiff St. Clair and/or the Board as
20 "Confidential," and those confidential records and information which the Court orders the Board
21 to produce. The Court-issued Protective Order applies because those documents contain
22 confidential information, which if shared, could jeopardize the safety and security of the Board
23 employees and/or CDCR institutions, its employees, inmates, informants and their families, the
24 Defendants, or other individuals.

25 2. The confidential material may be disclosed only to the following persons:

26 (a) Plaintiff St. Clair's retained attorney(s) of record;

27 (b) The attorney(s) of record for Defendant and the Board;

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1 (c) Any paralegal, secretarial, or clerical personnel regularly employed by counsel
2 for St. Clair, Defendant, and the Board, who are necessary to aid counsel for St. Clair, Defendant,
3 and the Board in the litigation of this matter;

4 (d) Court personnel and stenographic reporters necessarily involved in these
5 proceedings; and

6 (e) Any outside expert or consultant retained by counsel for St. Clair, Defendant,
7 and/or the Board for purposes of this action.

8 3. Confidential material and or information contained within the confidential material
9 may be used, discussed, or disclosed to any witness, including inmates, former inmates, parolees
10 or former parolees, provided that the documents have been redacted to protect the personally
11 identifiable information and privacy interests of persons referenced within the materials. Before
12 discussing, disclosing, or using any confidential materials provided by the Board, Counsel for the
13 respective parties will submit redacted versions of any documents they wish to discuss, disclose
14 or otherwise use at trial, to the attorney for the California Board of Physical Therapy. The
15 attorney for the California Board of Physical Therapy will review the proposed redactions to
16 ensure they are complete and protect the privacy interests of the individuals discussed in those
17 documents, Board and the public. If the attorney for the Board believes additional information
18 should be redacted, he will notify Counsel who submitted the document and inform them of
19 further redactions, and the reason for the further redactions. If the attorney for the Board agrees
20 the redactions are acceptable, he will send written notice of their review to the respective counsel.

21 None of the unredacted confidential material or information contained within the
22 confidential material shall be shown to St. Clair, or shown to, discussed with, or disclosed in any
23 other manner to any other inmate or former inmate, any parolee or former parolee, or any other
24 person not indicated in paragraph 2, unless a written waiver expressly authorizing such disclosure
25 has been obtained from counsel for the Board, who shall maintain possession and control over the
26 original confidential material.

27 4. No person who has access to the confidential material, as set forth in paragraph 2,
28 shall copy any portion of the confidential material, except as necessary to provide a copy of the

1 confidential material to any other authorized individual listed in paragraph 2, or to submit copies
2 to the Court under seal in connection with this matter. Any copies made for such purpose will be
3 subject to this order. A copy of this order must be provided to any individual authorized to access
4 the confidential material before providing that individual with access to the confidential material,
5 and that individual must agree in writing to comply with this order. Counsel for the parties shall
6 maintain a record of all persons to whom access to the confidential material has been
7 provided. The Court and counsel for the Board may request a copy of such record at any time to
8 determine compliance with the Court's order.

9 5. Any exhibits or documents filed with the Court that reveal confidential material, or
10 the contents of any confidential material, shall be submitted on purple or pink paper, filed under
11 seal, labeled with a cover sheet bearing the case name and number and the statement: "This
12 document is subject to a Protective Order issued by the Court and may not be copied or examined
13 except in compliance with that Order." Documents so labeled shall be kept by the Clerk of this
14 Court under seal and shall be made available only to the Court or counsel of record for the
15 parties. If any party fails to file confidential material in accordance with this paragraph, any party
16 may request that the Court place the filing under seal.

17 6. The portion(s) of any transcript of a deposition of any witness testifying about
18 confidential information shall be designated as confidential by the court reporter at the request of
19 the Board and kept under seal subject to a further order of the Court. Information or material
20 designated as confidential by the Board may be disclosed or discussed in open court, subject to a
21 Motion in Limine and/or Motion for Protective Order filed by Defendant and/or the Board.

22 7. At the conclusion of the proceedings in this case, including any period for appeal
23 or collateral review, or upon other termination of this litigation, counsel for St. Clair shall destroy
24 all confidential materials and all copies of such material in counsel's possession or return such
25 materials to counsel for the Board.

26 8. All confidential material in this matter shall be used solely in connection with the
27 litigation of this matter, or any related appellate proceeding and collateral review, and not for any
28 other purpose, including any other litigation or proceeding.

