

the “St. Luke’s Parties”), by and through their counsel of record, Holland & Hart LLP, hereby submit this Memorandum in Support of their Motion to Seal.

I. ARGUMENT

The St. Luke’s Parties request an order sealing the Declaration of Jennifer M. Jensen filed in Support of the Motion to Seal and its Exhibit. The Exhibit is an unredacted version of the Fourth Amended Complaint filed in the lawsuit *St. Luke’s Health System Ltd. et al. v. Ammon Bundy et al.*, pending in state court in the Fourth Judicial District, County of Ada (the “Lawsuit”).

The Fourth Amended Complaint is the operative complaint in the Lawsuit and thus the pleading that should have been submitted with Ammon Bundy’s Petition to Transfer Case From State Court to Federal Court, filed May 1, 2023 (Dkt. 1) (the “Petition”). To further the expeditious resolution of the Petition, the St. Luke’s Parties seek to submit an unredacted copy of the Fourth Amended Complaint to this Court.

The Fourth Amended Complaint contains health information of a third-party to the Lawsuit, an infant who was taken into temporary CPS custody and brought to St. Luke’s for necessary medical treatment (the “Infant”). Due to the claims of defamation, the truth of the Infant’s medical condition is material and alleged in the Fourth Amended Complaint.

The unredacted copy of the Fourth Amended Complaint should be sealed subject to the Health Insurance Portability and Accountability Act (“HIPAA”) privacy and security regulations. *See* 45 C.F.R. part 164; F.R.C.P. 5.2(d).

The Fourth Amended Complaint contains protected health information (“PHI”). *See* 45 C.F.R. § 160.103. PHI is individually identifiable health information, which relates to health, health care, or payment and either identifies the individual or for which “there is a reasonable basis to believe the information can be used to identify the individual.” 45 C.F.R. § 160.103. While the St. Luke’s Parties can use this PHI for health care operations, *see* 45 C.F.R. §§ 164.501, 164.506, including legal purposes, they seek to disclose the information minimally necessary to accomplish the intended purpose. 45 C.F.R. § 164.502.

Because of the widespread publicity surrounding the circumstances addressed in the Fourth Amended Complaint, many of the allegations and statements in the Fourth Amended Complaint can be used to identify the individual patient. The St. Luke’s Parties cannot fully respond to the Petition without disclosing the Fourth Amended Complaint (and therefore PHI) and cannot file unredacted copies of it publicly and comply with the directive to only disclose the information minimally necessary. Bundy and the other Defendants have publicly disclosed portions of the PHI referenced in the Fourth Amended Complaint, but that does not eliminate the St. Luke’s Parties’ obligation not to disclose such information.

Therefore, the St. Luke’s Parties seek to have the Declaration of Jennifer Jensen and the Fourth Amended Complaint attached as an Exhibit filed under seal. A redacted copy of the Fourth Amended Complaint will be filed with an unsealed declaration to fulfill their obligations to provide public access to judicial records.

II. CONCLUSION

For the foregoing reasons, the St. Luke's Parties request that this Court grant their Motion to Seal.

DATED: May 8, 2023

HOLLAND & HART LLP

By: /s/Erik F. Stidham

Erik F. Stidham

Jennifer M. Jensen

Zachery J. McCraney

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of May, 2023, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

n/a

AND I FURTHER CERTIFY that on May 9, 2023 I served the foregoing on the following non-CM/ECF Registered Participants in the manner indicated:

Via first class mail, postage prepaid addressed as follows:

Ammon Bundy
Ammon Bundy for Governor
People's Rights Network
4615 Harvest Lane
Emmett, ID 83617-3601

Diego Rodriguez
Freedom Man PAC
Freedom Man Press LLC
1317 Edgewater Dr. #5077
Orlando, FL 32804

May 8, 2023 via email:

Ammon Bundy – aebundy@bundyfarms.com
Diego Rodriguez - freedommanpress@protonmail.com

/s/ Erik F. Stidham

Erik F. Stidham
of HOLLAND & HART LLP

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