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Electronically Filed
FIRST CIRCUIT
1CCV-21-0000683
06-JUL-2026
10:12 AM
Dkt. 579 PSTMT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN
TAN, M.D.; SELENA PETERS, M.D.;
MERLA TAKENAKA RN; KAPIOLANI
MEDICAL SPECIALISTS; KAPIOLANI
MEDICAL CENTER FOR WOMAN AND
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (SMK)

**DEFENDANTS PATRICK J.
O'DONNELL, M.D.; SUSAN TAN, M.D.;
AND KAPI'OLANI MEDICAL
SPECIALISTS' POSITION
STATEMENT RE MOVANT PUBLIC
FIRST LAW CENTER'S MOTION TO
UNSEAL [DKT. 547]; DECLARATION
OF JANNA WEHILANI AHU;
EXHIBIT "A"; CERTIFICATE OF
SERVICE**

HEARING:

Date: July 14, 2026

Time: 11:00 a.m.

Judge: Honorable Shirley M. Kawamura

Trial: Vacated

Judge: Honorable Shirley M. Kawamura

**DEFENDANTS PATRICK J. O'DONNELL, M.D.; SUSAN TAN, M.D.; AND
KAPI'OLANI MEDICAL SPECIALISTS' POSITION STATEMENT RE MOVANT
PUBLIC FIRST LAW CENTER'S MOTION TO UNSEAL [DKT. 547]**

I. INTRODUCTION

Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; and Kapi'olani Medical Specialists ("KMS Defendants"), by and through their attorneys, Dentons US LLP, hereby submit this Position Statement regarding Movant Public First Law Center's ("Public First") Motion to Unseal, filed on May 8, 2026 [Dkt. 547]. Public First seeks to unseal the following court records:

- Dkt. 115 – Memorandum in Opposition to Motion for Declaratory Judgment, in the Alternative Motion for Judgment on the Pleadings and Exhibit B filed by KMS Defendants;
- Dkt. 347 – Supplemental Memorandum in Support of Motion to Compel Discovery and Exhibits A-B filed by KMS Defendants;
- Dkt. 387 and 388 – Memorandum in Support of Motion for Summary Judgment and Exhibits B, C-2, D-2, E, I, J, and K filed by KMS Defendants; and
- Dkt. 474 – Memorandum in Opposition to Motion for Partial Summary Judgment and Exhibits D and F filed by KMS Defendants.

KMS Defendants filed the above-referenced documents under seal in compliance with federal and state law and rules, and in recognition of Plaintiff's significant privacy interests at stake. The documents were sealed to safeguard Plaintiff's medical and protected health information ("PHI") from public disclosure, consistent with the obligations imposed by federal and state privacy laws. Nonetheless, KMS Defendants recognize that these privacy rights belong to Plaintiff. Accordingly, as set forth more fully below, KMS Defendants take no position with regard to the relief requested in Public First's request to unseal the foregoing documents.

II. LEGAL STANDARD

Hawai'i courts have a "long-established policy of openness in judicial proceedings" and "emphasize[] the importance of public access to judicial records." *In re Est. of Campbell*, 106 Hawai'i 453, 462-63, 106 P.3d 1096, 1105-06 (2005). The Hawai'i Supreme Court has confirmed that the reasons underlying the "presumption of openness," which are typically analyzed in the criminal context, "are equally compelling in the civil context." *Id.*; see also *Oahu Publications Inc. v. Ahn*, 133 Hawai'i 482, 496 n.18, 331 P.3d 460, 474 n.18 (2014), as

corrected (Aug. 5, 2014) (same). The openness standard serves as “a safeguard of the integrity of our courts.” *Grube v. Trader*, 142 Hawai‘i 412, 422, 420 P.3d 343, 353 (2018).

However, the right of access can be overcome by a “compelling interest” and findings that “the closure is essential to preserve higher values” and that the closure is “narrowly tailored” to serve that interest. *Grube*, 142 Hawai‘i at 424, 420 P.3d at 355. The Ninth Circuit has explained that in its discretion “a court may seal records only when it finds ‘a compelling reason and articulates the factual basis for its ruling without relying on hypothesis or conjecture.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016) (quoting *Kamakana v. City and Cnty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179. An example of a “compelling reason” is when a court record might be used “as sources of business information that might harm a litigant’s competitive standing.” *Chrysler*, 809 F.3d at 1097 (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598-99 (1978)). Further, in situations where “court files might have become a vehicle for improper purposes,” such as the release of trade secrets, there is also a “compelling reason” to seal. *Kamakana*, 447 F.3d at 1179.

To justify sealing, a Court must find that: “(1) [the] closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.” *Ahn*, 133 Hawai‘i at 498, 331 P.3d at 476.

III. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff’s Amended Complaint [Dkt. 65] contains multiple allegations setting forth in the public record his personal health information. *See, e.g.*, Dkt. 65, FAC at ¶¶8, 9, 10, 11, 30, 31, 40, and 42 (not an exhaustive list). KMS Defendants’ Answer to the FAC [Dkt. 82] necessarily included references to Plaintiff’s personal health information, which Plaintiff put at issue in his FAC. *See, e.g.*, Dkt. 82, Answer, at ¶¶10, 13, 18, 19, 24, 27 and 32 (not an exhaustive list). Similarly, KMS Defendants’ subsequent filings—including their memorandum in opposition to Plaintiff’s motion for judgment on the pleadings [Dkt. 115], supplemental memorandum in support of their motion to compel discovery [Dkt. 347], memorandum in support of their motion for summary judgment and exhibits [Dkts. 387 and 388], and memorandum in opposition to

Plaintiff's motion for partial summary judgment [Dkt. 474]—necessarily referenced Plaintiff's medical information and PHI in the course of litigating the substantive claims in this medical malpractice action.

Pursuant to Rule 9 of the Hawai'i Court Records Rules in place at the time, and subsequently pursuant to motions to seal granted by the Court, parties were required to submit confidential information of certain categories—including medical information—for filing under seal. KMS Defendants complied with applicable rules and procedures and instruction by filing publicly accessible versions of their filings with limited redactions to protect Plaintiff's confidential PHI, while simultaneously filing unredacted versions under seal. *See* Dkt. Nos. 115, 347, 387, 388, and 474.

On March 26, 2026, KMS Defendants submitted their motion for summary judgment and motion to seal to the Court for a hearing date. *See* Ex. A. On March 27, 2026, the Court directed KMS Defendants to file their motion to seal as an *ex parte* motion. *See id.*

Public First's Motion argues that the procedural and substantive requirements for sealing were not met for the documents it seeks to unseal, and that Plaintiff has repeatedly waived his privacy rights in his medical records.

IV. POSITION STATEMENT

Pursuant to the protections afforded to PHI, KMS Defendants properly filed the documents at issue under seal because portions of those documents are protected from public disclosure by HIPAA, the Hawai'i Court Records Rules in operation at the time of certain filings, and article I, section 6 of the Hawai'i State Constitution and case law interpreting and applying article I, section 6. At the time KMS Defendants made each sealed filing, the applicable rules, case law, and procedures required or permitted the sealing of documents containing PHI. The sealed documents reference Plaintiff's medical history, medical conditions, and include a recording of his discussion with a healthcare provider about his medical condition, which Plaintiff placed at issue in this medical malpractice action. In addition, minimally redacted versions of the briefing were filed publicly.

Article I, section 6 of the Constitution of the State of Hawai'i provides, in part, that “[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest.” (emphasis added).

[T]he [article I, section 6] right of privacy encompasses the common law right of privacy or tort privacy. This is a recognition that the dissemination of private and personal matters, be it true, embarrassing or not, can cause mental pain and distress far greater than bodily injury. For example, the right can be used to protect an individual from invasion of [the individual's] private affairs, public disclosure of embarrassing facts, and publicity placing the individual in a false light. In short, this right of privacy includes the right of an individual to tell the world to ‘mind your own business.’

Brende v. Hara, 113 Hawai‘i 424, 430, 153 P.3d 1109, 1115 (2007)(per curiam) (quoting Stand. Comm. Rep. No. 69, in Proceedings of the Constitutional Convention of Hawai‘i of 1978 (Proceedings), Vol. I, at 674. “[A]rticle I, Section 6 ‘relates to privacy in the informational and personal autonomy sense.’” *State of Hawai‘i Organization of Police Officers (SHOPO) v. Society of Professional Journalists—University of Hawai‘i Chapter*, 83 Hawai‘i 378, 397, 927 P.2d 386, 405 (1996), *superseded on other grounds*, 1995 Haw. Sess. Laws Act 242 § 1 at 64142, as recognized in *Peer News LLC v. City & Cnty. of Honolulu*, 138 Hawai‘i 53, 63-65, 376 P.3d 1, 11-13 (2016)) (quoting Stand. Comm. Rep. No. 69 in Proceedings, at 674). “[T]he privacy right protected by the ‘informational privacy’ prong of article I, section 6 is the right to keep confidential information which is ‘highly personal and intimate.’” *Id.* at 398 (quoting Comm. Whole Rep. No. 15 in Proceedings, at 1024 and citing *Painting Industry of Hawaii Market Recovery Fund v. Alm*, 69 Haw. 449, 746 P.2d 79 (1987), *superseded on other grounds*, 1995 Haw. Sess. Laws Act 242 § 1 at 641-42, as recognized in *Peer News LLC v. City & Cnty. of Honolulu*, 138 Haw. 53, 66, 376 P.3d 1, 14 (2016)). “Highly personal and intimate” information that is protected by the informational prong of article I, section 6 includes “medical, financial, educational, or employment records.” *Id.* at 454, 746 P.2d at 82 (emphasis added); *State v. Mallan*, 86 Hawai‘i 440, 443 n. 4, 950 P.2d 178, 181 n. 4 (1998).

In this way, article I, section 6 provides Hawai‘i’s people with powerful protection against any infringement of their right to privacy, by state and private actors. In fact, we have previously noted that the framers “equated privacy in the informational sense” with the “common law right of privacy,” so that “[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his [or her] privacy, if the matter publicized is of a kind that (a) would be regarded as highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.”

Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr., 138 Hawai‘i 14, 19, 375 P.3d 1252, 1257 (2016) (internal citation omitted).

KMS Defendants properly filed the documents and recording at issue under seal to comply with the relevant laws and rules, and in recognition of Plaintiff's significant privacy interests at stake. KMS Defendants note that Public First's Motion argues, among other things, that (1) the procedural requirements for sealing were not met because the public was not afforded sufficient notice and opportunity to be heard, (2) the sealing orders lacked specific findings to support closure, and (3) Plaintiff has expressly and repeatedly waived his privacy rights in the sealed medical records. *See* Dkt. 547 at 8-9. Those arguments are directed at the Court, and can be addressed by the Court. While KMS Defendants maintain that their filings were made in good faith compliance with the rules, procedures in effect at the time, and the Court's instructions, and that the sealing was narrowly tailored to protect only Plaintiff's confidential PHI, KMS Defendants recognize that the privacy rights at issue here belong to Plaintiff. Accordingly, KMS Defendants take no position with regard to the relief requested in Public First's request to unseal the documents identified in the Motion [Dkt. 547].

V. CONCLUSION

Based on the foregoing authority, KMS Defendants properly submitted the documents at issue for filing under seal while simultaneously filing publicly accessible versions of the briefing with limited redactions to protect Plaintiff's privacy rights. However, KMS Defendants take no position with regard to the relief requested in Public First's Motion to Unseal [Dkt. 547].

DATED: Honolulu, Hawai'i, July 6, 2026.

/s/ Janna Wehilani Ahu
JOHN-ANDERSON L. MEYER
JANNA WEHILANI AHU

Attorneys for Defendants
PATRICK J. O'DONNELL, M.D.;
SUSAN TAN, M.D.; and KAPIOLANI
MEDICAL SPECIALISTS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN
TAN, M.D.; SELENA PETERS, M.D.;
MERLA TAKENAKA RN; KAPIOLANI
MEDICAL SPECIALISTS; KAPIOLANI
MEDICAL CENTER FOR WOMAN AND
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (SMK)

**DECLARATION OF
JANNA WEHILANI AHU**

DECLARATION OF JANNA WEHILANI AHU

I, JANNA WEHILANI AHU, declare and state under penalty of perjury that the following facts are true and correct.

1. I am duly licensed to practice law in the State of Hawai'i, am an attorney with the law firm of Dentons US LLP, and am one of the attorneys representing PATRICK J. O'DONNELL, M.D.; SUSAN TAN, M.D.; and KAPIOLANI MEDICAL SPECIALISTS (hereinafter collectively "Defendants") in the above-captioned matter.

2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein. I provide this declaration in support of Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; and Kapiolani Medical Specialists' Position Statement re Movant Public First Law Center's Motion to Unseal [Dkt. 547].

3. Attached hereto as Exhibit "A" is a true and correct copy of an email chain between Twelfth Division, Judge Shirley M. Kawamura's courtroom and my office, dated March 26 and 27, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, July 6, 2026.

/s/ Janna Wehilani Ahu
JANNA WEHILANI AHU

From: 12thDivision 1CC <12thDivision.1CC@courts.hawaii.gov>
Sent: Friday, March 27, 2026 10:54 AM
To: Ching, Cindy
Cc: Meyer, John-Anderson L.; Ahu, Janna W.; Somers, Tiare K.F.; KwanLynne Mooney; Malia F. Taylor-Wolfe; JennaLynn K. Higashionna
Subject: Re: Civil No. 1CCV-21-0000683 (SMK), Jared James v. Patrick J. O'Donnell, M.D., et al. - Request for Hearing Date

[WARNING: EXTERNAL SENDER]

Good Morning Ms. Ching,

Upon further review of the *Motion to Seal*, please file it as an Ex Parte motion.

Thank you,

Jenna

Twelfth Division

Judge Shirley M. Kawamura

Courtroom No. 12; Chambers No. 3

777 Punchbowl Street, Fourth Floor

Honolulu, Hawaii 96813

Phone: (808) 539-4330

[Zoom Meeting Link](#)

Zoom Meeting ID: 8085394330

From: Ching, Cindy <cindy.ching@dentons.com>
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Cc: Meyer, John-Anderson L. <john-anderson.meyer@dentons.com>; Ahu, Janna W. <janna.ahu@dentons.com>; Somers, Tiare K.F. <tiare.somers@dentons.com>; KwanLynne Mooney <KwanLynne.Mooney@courts.hawaii.gov>; Malia F. Taylor-Wolfe <Malia.F.Taylor-Wolfe@courts.hawaii.gov>; JennaLynn K. Higashionna <JennaLynn.K.Higashionna@courts.hawaii.gov>
Subject: RE: Civil No. 1CCV-21-0000683 (SMK), Jared James v. Patrick J. O'Donnell, M.D., et al. - Request for Hearing Date

Received – thank you.

Cindy Ching

Legal Administrative Assistant

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Honolulu

From: 12thDivision 1CC <12thDivision.1CC@courts.hawaii.gov>
Sent: Friday, March 27, 2026 10:43 AM
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Cc: Meyer, John-Anderson L. <john-anderson.meyer@dentons.com>; Ahu, Janna W. <janna.ahu@dentons.com>; Somers, Tiare K.F. <tiare.somers@dentons.com>; KwanLynne Mooney <KwanLynne.Mooney@courts.hawaii.gov>; Malia F. Taylor-Wolfe <Malia.F.Taylor-Wolfe@courts.hawaii.gov>; JennaLynn K. Higashionna <JennaLynn.K.Higashionna@courts.hawaii.gov>
Subject: Re: Civil No. 1CCV-21-0000683 (SMK), Jared James v. Patrick J. O'Donnell, M.D., et al. - Request for Hearing Date

[WARNING: EXTERNAL SENDER]

Good Morning Ms. Ching,

Please schedule the requested motions for hearing on **Wednesday, April 29, 2026, at 11:00 A.M.** The hearing will be conducted **in-person**.

Please file a Notice of Hearing (not a Notice of Remote Hearing).

Although the JEFs guide instructs separate filing of the memorandum/exhibits/declarations, Judge Kawamura prefers, if possible, that all documents be filed as one document provided it does not exceed the 10mb size limit.

Please note that Judge Kawamura requires two (2) courtesy copies pursuant to RCC 7.2(g)(6).

Thank you,

Jenna

Twelfth Division

Judge Shirley M. Kawamura

Courtroom No. 12; Chambers No. 3

777 Punchbowl Street, Fourth Floor

Honolulu, Hawaii 96813

Phone: (808) 539-4330

[Zoom Meeting Link](#)

Zoom Meeting ID: 8085394330

From: Ching, Cindy <cindy.ching@dentons.com>
Sent: Thursday, March 26, 2026 2:09 PM
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Subject: Civil No. 1CCV-21-0000683 (SMK), Jared James v. Patrick J. O'Donnell, M.D., et al. - Request for Hearing Date

Jared James v. Patrick J. O'Donnell, M.D., et al.; Civil No. 1CC-21-0000683 (SMK)
In the Circuit Court of the First Circuit, State of Hawaii

Good Morning,

Attached for your review and assignment of a hearing date is a draft of *Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; And Kapi'olani Medical Specialists' Motion for Summary Judgment; Memorandum in Support of Motion; Declaration of John-Anderson L. Meyer; Exhibits "A" - "K"; Notice of Hearing Motion; Certificate of Service.*

Also attached is a draft Motion to Seal and sealed exhibits.

Per Janna Ahu, it is her understanding that at least one other defendant will be filing a motion for summary judgment. May we request that these motions be heard on the same day, if possible?
Thank you so much.

Cindy Ching

Legal Administrative Assistant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing document to be served on the following persons by U.S. mail, postage prepaid or electronic filing through JEFS System (as indicated below):

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Pro Se

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USPS Mail With Delivery
Confirmation, and E-Mail***

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***USPS Mail With Delivery
Confirmation and E-Mail***

Attorney for Movant
PUBLIC FIRST LAW CENTER

DATED: Honolulu, Hawai'i, July 6, 2026.

/s/ Janna Wehilani Ahu
JOHN-ANDERSON L. MEYER
JANNA WEHILANI AHU

Attorneys for Defendants
PATRICK J. O'DONNELL, M.D.;
SUSAN TAN, M.D.; and KAPIOLANI
MEDICAL SPECIALISTS