In the Supreme Court of Illinois

John Doe,	) Rule 315 Petition for Leave to Appeal
	) from the First District Appellate
Plaintiff-Appellee,	) Court, No. 1-21-1283;
	)
v.	) There Heard on Appeal from the
	) Circuit Court of Cook County, Illinois,
Burke Wise Morrissey & Kaveny,	) No.: 17 L 4610
LLC, an Illinois Professional	)
Limited Liability Company, and	)
Elizabeth A. Kaveny,	)
	) The Honorable
Defendants-	) Margaret A. Brennan,
Appellants.	) Judge Presiding

APPELLANTS' ADDITIONAL BRIEF AND APPENDIX

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POINTS AND AUTHORITIES

POINTS AND AUTHORITIES i

NATURE OF THE CASE 1

ISSUES PRESENTED FOR REVIEW 1

1. Did the plaintiff waive the confidentiality of mental health information by providing detailed testimony and evidence regarding that information during his medical malpractice trial? 1

2. Does the Mental Health and Developmental Disabilities Confidentiality Act apply to communications made and records kept outside the context of any mental health or developmental disabilities services? 1

STATEMENT OF JURISDICTION 2

INTRODUCTORY NOTE REGARDING PLAINTIFF'S USE OF A FICTITIOUS NAME ON APPEAL 2

STATUTES INVOLVED 3

STATEMENT OF FACTS 6

I. The Underlying Medical Malpractice Litigation 6

A. History of Counsel in Underlying Action 6

B. Plaintiff's Testimony in the Underlying Medical Malpractice Litigation 7

II. Plaintiff's Action Against the Kaveny Defendants 12

III. The Appellate Court's Opinion 16

ARGUMENT 17

I. Standard of Review 17

Nyhammer v. Basta, 2022 IL 128354 17

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

II. Plaintiff's voluntary public disclosure of his mental health information took away its confidentiality. 17

A. Under *Novak* and *Norskog*, plaintiff irrevocably waived his Confidentiality Act privilege. 17

Novak v. Rathnam, 106 Ill. 2d 478 (1985) 17, 18, 19, 20

Norskog v. Pfiel, 197 Ill. 2d 60 (2001) 17, 19, 20

B. The existence of a qualified protective order under HIPAA does not cast a cloak of confidentiality over publicly disclosed information. 20

Novak v. Rathnam, 106 Ill. 2d 478 (1985) 20, 21, 24

Doe v. Burke Wise Morrissey & Kaveny, LLC, 2022 IL App (1st) 211283 22

Haage v. Zavala, 2020 IL App (2d) 190499 22

45 C.F.R. § 164.512 .... 22, 23

45 C.F.R. § 160.103 23

Skolnick v. Altheimer & Gray, 191 Ill. 2d 214 (2000) 23

A.P. v. M.E.E., 354 Ill. App. 3d 989 (1st Dist. 2004) 23

III. The protection afforded by the Confidentiality Act is limited to records kept and communications made in the course of providing mental health and developmental disabilities services. 24

740 ILCS 110/3 24

740 ILCS 110/2 .... 24, 29

Johnston v. Weil, 241 Ill. 2d 169 (2011) 25, 26, 27

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Quigg v. Walgreen Co.,
388 Ill. App. 3d 696 (2nd Dist. 2009) 26, 27

Doe v. Burke Wise Morrissey & Kaveny, LLC,
2022 IL App (1st) 211283 .... 26, 27, 28, 30

Johnson v. Lincoln Christian College,
150 Ill. App. 3d 733 (4th Dist. 1986) 27, 28, 29

740 ILCS 110/5 29

740 ILCS 110/10 30

CONCLUSION 31

CERTIFICATION OF COMPLIANCE 32

CERTIFICATE OF SERVICE 32

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

NATURE OF THE CASE

This litigation has its origins during a troubled period of plaintiff's life. While hospitalized at Advocate Good Samaritan Hospital following a suicide attempt, plaintiff made a second attempt using a knife he had in his pocket when he arrived at the hospital. Defendants Elizabeth A. Kaveny and Burke Wise Morrissey & Kaveny, LLC ("the Kaveny Defendants" tried plaintiff's medical malpractice claims against the hospital, securing a $4,243,588 verdict in his favor. (C218–19.) Plaintiff then sued the Kaveny Defendants, alleging they violated the Mental Health and Developmental Disabilities Confidentiality Act ("Confidentiality Act") by issuing a press release and commenting to the press regarding that verdict. (C27/A1.) This appeal raises a question on the pleadings as to whether plaintiff's complaint states a claim under the Confidentiality Act.

ISSUES PRESENTED FOR REVIEW

1. Did the plaintiff waive the confidentiality of mental health information by providing detailed testimony and evidence regarding that information during his medical malpractice trial?

2. Does the Mental Health and Developmental Disabilities Confidentiality Act apply to communications made and records kept outside the context of any mental health or developmental disabilities services?

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

STATEMENT OF JURISDICTION

Plaintiff's complaint alleged six counts against the Kaveny Defendants. (C28–55/A1–A29.) On April 5, 2018, the trial court dismissed Counts I, II, III, and V with prejudice and dismissed Counts IV and VI with leave to replead. (C375/A129.) After plaintiff filed an amended complaint (C377), the trial court dismissed Count VI with prejudice on October 4, 2018 (C810/A135). Three years later, seeking to appeal the dismissal of his Confidentiality Act claim in Count I, plaintiff voluntarily dismissed his sole remaining claim on September 9, 2021. (C1681–82, C1683/A137.) Plaintiff's timely notice of appeal (C1683/A138) vested the appellate court with jurisdiction pursuant to Supreme Court Rules 301 and 303. Ill. S. Ct. Rs. 301, 303.

The appellate court's opinion was published on October 7, 2022. *Doe v. Burke Wise Morrissey & Kaveny, Ltd. liability Co.*, 2022 IL App (1st) 211283. (A141.) This Court, having granted leave to appeal on January 25, 2023, has jurisdiction pursuant to Supreme Court Rule 315. Ill. S. Ct. R. 315.

INTRODUCTORY NOTE REGARDING PLAINTIFF'S USE OF A FICTITIOUS NAME ON APPEAL

Plaintiff filed suit against the Kaveny Defendants under his proper name in May 2017. (C27/A1.) By October 2018, the trial court had dismissed five of the six counts plaintiff had pleaded against the Kaveny

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Defendants with prejudice. (C375/A129, C810/A135.) Plaintiff voluntarily dismissed his remaining claim in September 2021 in order to pursue an appeal as to his claim under the Confidentiality Act. (C1683/A137.)

After his appeal was fully briefed, but before the appellate court had rendered a decision, plaintiff for the first time requested leave to proceed under a fictitious name. The motion was granted without objection. Consistent with that order, the Kaveny Defendants refer to plaintiff simply as "plaintiff" or as Doe throughout this brief. Because plaintiff did not seek to proceed under a fictitious name until his appeal was fully briefed, however, the entirety of the underlying record refers to plaintiff by his given name. In the spirit of the order permitting plaintiff to proceed under a fictitious name, the Kaveny Defendants have redacted each reference to plaintiff's given name in the record documents included in the appendix.

Statutes Involved

740 ILCS 110/2 (Lexis 2014)

> The terms used in this Act, unless the context requires otherwise, have the meanings ascribed to them in this Section.
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> ***
>
> "Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

information which indicates that a person is a recipient. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514.

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"Mental health or developmental disabilities services" or "services" includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation.

***

"Record" means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided. "Records" includes all records maintained by a court that have been created in connection with, in preparation for, or as a result of the filing of any petition or certificate under Chapter II, Chapter III, or Chapter IV of the Mental Health and Developmental Disabilities Code and includes the petitions, certificates, dispositional reports, treatment plans, and reports of diagnostic evaluations and of hearings under Article VIII of Chapter III or under Article V of Chapter IV of that Code. Record does not include the therapist's personal notes, if such notes are kept in the therapist's sole possession for his own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If at any time such notes are disclosed, they shall be considered part of the recipient's record for purposes of this Act. "Record" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

740 ILCS 110/3(a) (Lexis 2014)

(a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act.

740 ILCS 110/10 (Lexis 2014)

(a) Except as provided herein, in any civil, criminal, administrative, or legislative proceeding, or in any proceeding preliminary thereto, a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications.

***

(8) Records or communications may be disclosed when such are relevant to a matter in issue in any action brought under this Act and proceedings preliminary thereto, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

740 ILCS 110/15 (Lexis 2014)

Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Statement of Facts

I. The Underlying Medical Malpractice Litigation

While hospitalized following an initial suicide attempt, plaintiff made a second attempt, sustaining extensive and life-threatening injuries. (C29/A3.) Two years later, in July 2009, plaintiff filed a medical malpractice suit, under his given name, against Advocate Good Samaritan Hospital. (C29/A3.) The trial court record remains unsealed and open to the public.[1]

A. History of Counsel in Underlying Action

He was represented at that time by the law firm Anesi Ozmon Rodin & Novak. (C29/A3.) About a year later, the Anesi Ozmon firm filed answers to interrogatories on plaintiff's behalf, which included "the names of the facilities where [Doe] received medical care, the names of [Doe's] treating physicians, and the dates of his treatment." (C30–31/A4–5.) The answers to interrogatories were not filed under seal and, thus, were publicly available as part of the court file. (C30/A4.)

Anesi Ozmon withdrew as counsel in July 2010, with Lawrence H. Hyman & Associates and Searcy L. Simpson, Jr. entering appearances as plaintiff's new counsel. (C29/A3, C31/A5.) Lawrence H. Hyman &

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[1] See https://casesearch.cookcountyclerkofcourt.org, Case No. 2009 L 008290

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Associates withdrew just two months later, with Zachary M. Bravos entering an appearance on plaintiff's behalf. (C31/A5.)

In March 2014, nearly five years after the medical malpractice lawsuit was first filed, the Kaveny Defendants entered their appearance, substituting into the case in place of Simpson and Bravos. (C31/A5.) The case proceeded to trial the following year. (C32/A6.)

B. Plaintiff's Testimony in the Underlying Medical Malpractice Litigation

At trial in his medical malpractice lawsuit, plaintiff offered deeply personal testimony regarding his history of mental health struggles, his suicide attempts, and his long road to recovery.

Plaintiff had experienced bouts of anxiety and depression beginning in adolescence. (C169/A61–70/A61–62.) During high school, he had experienced periodic panic attacks that were "really problematic." (C170/A62.) To manage his anxiety and depression, plaintiff saw a psychiatrist anywhere from two to four times per year and took prescription anti-anxiety medication. (C170/A62.)

During the first half of 2007, plaintiff began experiencing "troubling dizzy spells." (C169/A61.) Initially, these bouts of vertigo would go away after a couple of hours, but over time the episodes increased in terms of both frequency and duration. (C169/A61.) The vertigo became chronic sometime in April or May. (C173/A65.) In addition, plaintiff's relationship

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

with a woman he cared about had ended in January of 2007. (C173/A65.) Then a practicing tax attorney, plaintiff also had concerns related to his business. (C173/A65.)

In August 2007, plaintiff testified, he reached the end of his rope. (C174/A66.) In an attempt to commit suicide, plaintiff "took a lot of pills." (C172/A64.) After taking the pills, however, plaintiff had a change of heart and swiftly called 911. (C174/A66.) After he arrived at the emergency room, plaintiff's stomach was pumped and he was transferred to the critical care unit. (C175/A67.) After answering questions about how he was feeling and indicating that he was still considering suicide, plaintiff was transferred to the behavioral health unit of the hospital. (C175/A67.)

Plaintiff described his experience in the behavioral health unit. (C176/A68.) "Everything is locked" and "[t]here's no place where you can really hurt yourself." (C176/A68.) The rooms are "barren," and the beds are not comfortable. (C177/A69–78/A69–70.) There were no grab bars in the bathrooms "because… they don't want you anyplace where you can… hang yourself." (C177/A69.) In short, plaintiff "wasn't happy… at all" about being in the behavioral health unit. (C177/A69.)

On his first day in the behavioral health unit, having had the clothes he arrived in returned to him, plaintiff discovered that he had a knife in his pocket. (C177–78/A69–70.) He turned the knife over to a

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

member of the hospital staff. (C178/A70.) A few days later, however, plaintiff took his knife back and brought it into his room. (C178/A70.)

On August 6, 2007, plaintiff began to cut himself. (C179–80/A71–72.) Plaintiff recounted this suicide attempt in graphic and moving detail, describing what he felt both physically and emotionally during the attempt as well as the specific actions he took. (C180/A72.) After about two hours, plaintiff laid his head down and either passed out or fell asleep. (C181/A73.) A nurse found him the next morning. (C182/A74.)

Plaintiff showed the scars on his arms to the jury (C184/A76) and described his long journey to recovery (C185–203/A77–95). After the second suicide attempt, plaintiff was transferred to "3 North," which he described as "a locked unit within the locked unit." (C187/A79.) The unit was "a regular psych unit," according to plaintiff, "completely bare" with "furniture bolted to the floor." (C188/A80.) His room had a bed and a hospital tray. (C188/A80.) Most of the other patients in the unit stayed two or three days and were, according to plaintiff, "severely psychotic people." (C188/A80.) Plaintiff remained at 3 North for 30 days. (C188/A80.)

After leaving Advocate Good Samaritan Hospital, plaintiff was transferred to Alexian Brothers Hospital, in a ward similar to the behavioral unit at Advocate. (C189–90/A81–83.) According to plaintiff, "they're big on art therapy" at Alexian Brothers and told plaintiff he "didn't know how to cope and [*sic*] stress" even though "that's what [he] did

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

for a living." (C190/A83.) Everything was highly structured at Alexian Brothers. (C190/A83.)

Of all the places plaintiff stayed from August 2007 through 2013, he testified that the worst was a facility called Abbott House, a psychiatric nursing home. (C190/A83.) He felt like they treated him "like beyond a kid" there. (C191/A84.) He could never get a warm shower because the facility controlled the temperature. (C191/A84.) Other patients there "had some serious issues." (C191/A84.) And plaintiff was not allowed to leave for the first 30 days because of his suicidal history. (C191/A84.)

Plaintiff spent about a year at Elgin Hospital. (C192/A85.) Although plaintiff "was terrified when [he] was going there" because he "had heard horror stories about it," he testified that "there were some really good people there." (C192/A85.) The food at Elgin, however, was terrible. (C194/A86.)

After Elgin, plaintiff lived at Lawrence House for five years. (C193/A86.) When plaintiff first arrived, "[t]hey had a guy who owned a restaurant down there, and he would serve really good food." (C194/A86.) He was happy to be able to get a computer and a phone again: "Just start thinking stuff you take for granted. Everything's gone and then you get back these things, it's like wow." (C194/A86.) He could go outside. (C194/A86.)

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Plaintiff began working with a physiatrist at the Rehabilitation institute of Chicago, Dr. Roth, in 2013. (C196/A88.) Dr. Roth works with individuals who have suffered brain injuries. (C198/A90.) Dr. Roth diagnosed plaintiff and recommended a brain injury cognitive rehabilitative program. (C198/A90.) Plaintiff began that program in April 2013 and continued for 17 one-hour sessions. (C198/A90.) Plaintiff described some of the exercises he learned during those sessions and testified that the program helped. (C200–02/A92–94.) Plaintiff testified to medications he was taking at the time of the medical malpractice trial, including blood pressure medication, Klonopin for anxiety, and Adderall to help with focus and attention. (C203/A95.)

Finally, plaintiff testified about his attempts to return to practice as a lawyer. (C211/A103.) Although he had handled some pro bono cases, he had not accepted any work from paying clients since the suicide attempt. (C212/A104.) Plaintiff testified that, as a result of his brain injury, he was no longer able to represent clients professionally. (C213/A105.) He testified that his "biggest issues" at that point were "attention span, ability to stay focused and concentrated." (C213/A105.) He testified that he "fatigued very easily," both mentally and physically. (C213/A105.)

The jury returned a verdict in plaintiff's favor, awarding him $4,343,588 in damages. (C32/A6.)

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

II. Plaintiff's Action Against the Kaveny Defendants

Following the verdict, defendants issued a press release regarding the outcome of the case, noting that the verdict was "a record high reported verdict for an inpatient suicide attempt in Illinois." (C60/A34.)

The press release briefly recounted the circumstances of the inpatient suicide attempt, including the facts that plaintiff had been hospitalized following a failed suicide attempt, had been able to access his boating knife while in the care of the inpatient psychiatric unit, and had stabbed and slashed himself with the knife. (C60/A34.) The press release noted that plaintiff suffered "a permanent brain injury resulting in loss of executive functioning" and—despite "a remarkable recovery over eight years"—would "never be able to return to his occupation or prior level of functioning." (C61/A35.)

Kaveny was additionally quoted in an article about the verdict appearing in the Chicago Daily Law Bulletin. (C62/A37.) The firm's website was updated to include the press release noting this trial victory. (C71/A45.)

Two years after the verdict, plaintiff brought this action against the Kaveny Defendants, claiming the press release, comments to the media, and update of the firm's website all improperly disclosed his confidential mental health information to the public. (C27/A1.) The complaint extensively quoted from the press release, newspaper articles and the firm

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

website. (C33–34/A7–8, C36–37/A9–10.) Copies of the challenged press release, newspaper articles, and various pages on the defendant firm's website were attached as exhibits. (C60–78/A34–110.) Plaintiff did not seek to file his complaint under a fictitious name or to file any of the materials under seal. The complaint is brought in plaintiff's given name and remains open to the public[2]. (C27/A1.)

Plaintiff's complaint asserted six separate causes of action against the Kaveny Defendants: (1) violation of the Confidentiality Act; (2) wrongful public disclosure of private facts; (3) intrusion upon seclusion; (4) breach of fiduciary duty; (5) constructive trust; and (6) reckless infliction of emotional distress. (C27/A1–55.) Plaintiff's Confidentiality Act claim (C42–43/A16–17) is the sole claim at issue on appeal.

Before the trial court, the Kaveny Defendants argued that plaintiff's Confidentiality Act claim should be dismissed because: (1) there is no therapeutic relationship between the Kaveny Defendants and plaintiff; and (2) plaintiff waived the protections of the Confidentiality Act when his mental health issues were publicly disclosed in the medical malpractice litigation. (C101, C301–03.) Plaintiff countered that "even if the use of the Plaintiff's protected mental health information in the underlying medical

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[2] See https://casesearch.cookcountyclerkofcourt.org, Case No. 2017 L 004610.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

malpractice action was proper," the Kaveny Defendants' redisclosure of that information to the press and on their website following the verdict violated the Confidentiality Act. (C270.) Plaintiff argued that improper redisclosure of protected information will subject even a non-therapist to liability. (C270.)

Judge Brennan agreed with the Kaveny Defendants, ruling:

> So, let's go first with Count 1, where in essence the defendant's argument is that because there's not this therapeutic relationship between the defendant and their ·former client, Mr. Sandler, the plaintiff in this action, that, in fact, no cause of action can be maintained under the Illinois Mental Health and Disabilities Confidentiality Act.
>
> The plaintiff has responded that they weren't proceeding under that section of the act that the defendants had referred to, but, in fact, were saying that the redisclosure is the basis.
>
> The defendants have replied that, in fact, by the statements being made in a public trial that there has been a complete waiver under 10(a)(1) of this act. And, therefore, that no cause of action can be made because of that.
>
> It is the court's position that I think that [Quigg] versus Walgreen is very clear as to the need for therapeutic relationship. I think it's also very clear given that this was following a public trial and trials are public. And for these reasons, Count 1 is dismissed.

(C546/A125.) In its April 5, 2018, Order, the trial court dismissed plaintiff's Confidentiality Act claim with prejudice "for the reasons stated on the record." (C375/A129.)

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Having been granted leave to replead as to Counts IV and VI of his original Complaint (C375/A129), plaintiff filed an Amended Complaint (C377). The Amended Complaint again included plaintiff's Confidentiality Act claim as Count I, adding a disclaimer that acknowledged that Count I had been dismissed with prejudice and was "being re-pled herein solely to preserve the Plaintiff's right to seek appellate review." (C397.) Disclaimer notwithstanding, defendants pointed out that "Count I in the Amended Complaint contains allegations different from" the previously dismissed Count I in the original Complaint, and asked that this re-pled count be stricken. (C478.)

In its October 4, 2018, Order, the trial court agreed with defendants, "vehemently" rejecting plaintiff's suggestion that "because Defendants' arguments for dismissing Count I are procedural in nature they are somehow not worthy of consideration." (C807/A132.) "By failing to comply with proper procedure," the trial court admonished, plaintiff "transformed a routine motion to dismiss into a three-pronged motion to dismiss, for leave to file an amended complaint and to reconsider." (C807/A132.) Count I of the Amended Complaint was stricken without leave to replead. (C810/A135.)

A year-and-a-half later, plaintiff moved for reconsideration of the trial court's April 5, 2018, order dismissing Count I as well as the October 4, 2018, order dismissing Count I "as amended." (C944.) This time plaintiff

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

argued that the Kaveny Defendants violated the Confidentiality Act because his mental health information was "protected health information" under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). (C944.)

The trial court rejected this argument and declined to reconsider the dismissal. (C1267.) After voluntarily dismissing his sole remaining claim (C1683/A137), plaintiff appealed (C1683/A138).

III. The Appellate Court's Opinion

The appellate court reversed. (A141)

First, the appellate court held that the absence of a therapeutic relationship did not shield defendants from liability because another panel of the appellate court had "permitted a claim under the Act even where the defendant was not a provider of mental health services." *Doe*, 2022 IL App (1st) 211283 at ¶ 15 (citing *Johnson v. Lincoln Christian College*, 150 Ill. App. 3d 733 (4th Dist. 1986)). (A146.)

In addition, the appellate court held that plaintiff did not waive the confidentiality of his mental health information through his public disclosure at the medical malpractice trial. *Id.* at ¶ 17. (A147.) The appellate court acknowledged this Court's holding in *Novak v. Rathnam*, 106 Ill. 2d 478, 486 (1985), that a party's waiver of the confidentiality in one proceeding will be regarded as a waiver of confidentiality in future proceedings. Nevertheless, the appellate court held that *Novak* did not

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

apply because a qualified protective order had been entered under HIPAA in the medical malpractice litigation. *Doe*, 2022 IL App (1st) 211283 at ¶ 17. (A147.)

ARGUMENT

I. Standard of Review

The standard of review for dismissal of a complaint under § 2–615 of the Code of Civil Procedure is *de novo*. *Nyhammer v. Basta*, 2022 IL 128354, ¶ 23

II. Plaintiff's voluntary public disclosure of his mental health information took away its confidentiality.

A. Under *Novak* and *Norskog*, plaintiff irrevocably waived his Confidentiality Act privilege.

This Court's holding in *Novak v. Rathnam*, 106 Ill. 2d 478, 485 (1985), is dispositive: trial testimony is a public disclosure, and the public disclosure of information destroys its confidentiality. *Novak* involved a claim of privilege by psychiatrist Allen Rathnam and psychologist David Girmscheid regarding their treatment of Robert Lee Endicott during his involuntary commitment at Zeller Mental Health Center. *Id.* at 480–81. After Rathnam and Girmscheid approved his discharge, Endicott shot and killed Beverly Novak. *Id.* at 480. Endicott was tried for the murder in Florida. *Id.*

In support of his insanity defense, Endicott introduced "his Zeller medical records, including a discharge summary and a psychiatric

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

evaluation prepared by Rathnam and Girmscheid, which detailed their diagnosis and treatment of Endicott while a patient at Zeller." *Id.* Rathnam, one of four psychiatrists called by Endicott, "was questioned about the reports and testified in detail as to the treatment Endicott received while at Zeller." *Id.* at 480–81. Endicott was found not guilty by reason of insanity. *Id.* at 481.

Following Endicott's acquittal, Beverly's father brought a wrongful death action against Rathnam and Girmscheid alleging they were negligent in approving Endicott's discharge from Zeller. *Id.* at 479–80. Both Rathnam and Girmscheid refused to be deposed in the wrongful death action, asserting Endicott's privilege under the Confidentiality Act. *Id.* at 480–81.

On appeal, this Court affirmed the trial court's order compelling Rathnam and Girmscheid to sit for depositions. First, the court noted that Endicott had waived the privilege at his criminal trial by asserting the insanity defense:

> [W]hen a defendant raises an insanity defense and calls his own medical expert as a witness to establish the defense, he cannot thereafter assert the privilege to prevent the State, at the same trial, from calling other medical experts who treated him for the same condition.

Id. at 483.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

This Court further held that Endicott's waiver of confidentiality at his murder trial was irrevocable:

> If there is a disclosure of confidential information by the individual for whose benefit the privilege exists, or if he permits such a disclosure, the privilege is waived and cannot be reasserted.

Id. at 484. "The public disclosure by Endicott of information protected by the Act… took away its confidentiality." *Id.* at 485.

This Court distinguished *Novak* in *Norskog v. Pfiel*, 197 Ill. 2d 60 (2001). In that case, Steven Pfiel initially gave notice that he intended to assert an insanity defense, but ultimately pled guilty to two murders and was sentenced to life imprisonment. *Id.* at 63. The parents of one of Steven's victims sought discovery of Steven's mental health records in their wrongful death action against Steven and his parents, arguing that Steven had waived his Confidentiality Act privilege by raising an insanity defense in the criminal proceedings. *Id.* at 73.

The Illinois Supreme Court disagreed, explaining that, unlike Endicott, Steven never went to trial in his criminal case. *Id.* at 75. Once he pled guilty, his anticipated insanity defense was no longer in issue. *Id.* at 76. Further, "no psychiatrist or mental health therapist ever made a public disclosure of Steven's mental health records or testified in open court regarding mental health treatment Steven had received." *Id.* Under the

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

circumstances in *Norskog*, no waiver of the Confidentiality Act Privilege had occurred.

Taken together, *Novak* and *Norskog* define the circumstances under which an irrevocable waiver of the Confidentiality Act privilege occurs: when (1) a party places his mental health information at issue in a civil or criminal proceeding; and (2) confidential mental health information is publicly disclosed in open court.

That is precisely what occurred here: (1) plaintiff placed his mental health information squarely at issue when he asserted medical malpractice claims against his mental health care providers; and (2) plaintiff publicly disclosed his mental health information by testifying in detail at the medical malpractice trial. Plaintiff's public disclosure of this information "took away its confidentiality." *Novak*, 106 Ill. 2d at 485. The Kaveny Defendants could not violate the Confidentiality Act by disclosing information that was no longer confidential.

B. The existence of a qualified protective order under HIPAA does not cast a cloak of confidentiality over publicly disclosed information.

The appellate court's refusal to follow *Novak* rests on a profound misunderstanding of both the rationale for the holding in *Novak* and the purpose of a qualified protective order under HIPAA.

First, this Court's holding in *Novak* rests on the simple logic that once information has been publicly disclosed, that information is no longer

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confidential. *Novak*, 106 Ill. 2d at 485. There is no dispute that the mental health information at issue here was publicly disclosed in its entirety during the medical malpractice trial. As detailed above, plaintiff testified in depth during that trial about his history of depression and anxiety, the initial suicide attempt that led to his hospitalization, the suicide attempt that occurred during his hospitalization, his continued hospitalization and care at a series of institutions following the suicide attempts, his diagnosis and treatment for a brain injury following his suicide attempts, the ongoing cognitive difficulties that prevented his return to practice as an attorney, and the medications he was taking to treat his mental health conditions. (*Supra*, pp. 5–9, C169–213/A61–105.) Plaintiff has never claimed that the Kaveny Defendants ever revealed mental health information beyond what had been publicly disclosed during trial.

The appellate court's opinion does not explain how the existence of a qualified protective order under HIPAA changes anything. The qualified protective order simply allowed the parties and their attorneys access to plaintiff's protected health information through "formal discovery requests, subpoenas, depositions, pursuant to a patient authorization or through attorney-client communications." (C1132–33.) The order did not seal any part of the record in the medical malpractice litigation and did not change the fact that the trial was open to the public. The qualified protective order

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did not govern what evidence plaintiff chose to present during that trial or what testimony he chose to provide.

The appellate court held "that the information shared at the medical malpractice trial had restrictions on its use, such that Doe did not waive the Act's protections by testifying." *Doe v. Burke Wise Morrissey & Kaveny, LLC*, 2022 IL App (1st) 211283, ¶ 17. (A147.) In support, the appellate court pointed to the Second District's opinion in *Haage v. Zavala* observing that qualified protective orders:

> restrict how health information is used, prohibiting "'the parties from using or disclosing [the information] for any purpose other than the litigation or proceeding for which such information was requested,'" and requiring "'the return to the covered entity or destruction of [the information]…at the end of the litigation or proceeding.'"

Id. (quoting *Haage v. Zavala*, 2020 IL App (2d) 190499, ¶ 9 and 45 C.F.R. § 164.512(e)(1)(v)(A), (B)) (alterations in *Doe*). (A147.) Although the appellate court did not elaborate, it appears the court read this language as suggesting that all mental health information revealed by the evidence and testimony presented must somehow be returned or destroyed once a trial has concluded, restoring its confidentiality.

The appellate court's misunderstanding of the function of a HIPAA qualified protective order is reflected in the alteration it made in its quotation of the language of the Privacy Rule. *Id*. (A147.) The rule does not prohibit the disclosure or require the return or destruction, generically, of

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"the information." Rather, a qualified protective order under the rule must prohibit the disclosure and require the return or destruction "of the *protected health information*." 45 C.F.R. § 164.512(e)(1)(v)(A), (B) (emphasis added).

"Protected health information" does not simply mean any and all information related to an individual's health. Rather, "protected health information" is a defined term limited to "individually identifiable health information." 45 C.F.R. § 160.103. "Individually identifiable health information" is likewise a defined term limited to information "created or received by a health care provider, health plan, employer, or health care clearinghouse." 45 C.F.R. § 160.103. As testimony and other evidence presented at a public trial is not "created or received by a health care provider, health plan, employer, or health care clearinghouse," such testimony or evidence is not "protected health information."

The qualified protective order did not seal the record in the medical malpractice trial, nor did it close the proceedings to the public. Because the "common law right of access to court records is essential to the proper functioning of a democracy" (*Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 230 (2000)), "[j]udicial proceedings in the United States are open to the public—in criminal cases by constitutional command, and in civil cases by force of tradition" (*A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 993 (1st Dist. 2004)). Consistent with these weighty principles, plaintiff's medical

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malpractice trial remained open to the public. Every detail revealed at that trial regarding plaintiff's mental health condition and treatment became a matter of public record; no confidentiality remained. *Novak*, 106 Ill. 2d at 485.

Accordingly, the judgment of the appellate court must be reversed and the judgment of the trial court affirmed.

III. The protection afforded by the Confidentiality Act is limited to records kept and communications made in the course of providing mental health and developmental disabilities services.

The appellate court should additionally be reversed and the trial court affirmed because the post-verdict statements by the Kaveny Defendants are outside the scope of the Confidentiality Act's protections.

The Confidentiality Act shields from disclosure "records and communications." 740 ILCS 110/3. "Record" is defined as "any record kept by a therapist or by an agency *in the course of providing mental health or developmental disabilities service* to a recipient concerning the recipient and the services provided." 740 ILCS 110/2 (emphasis added). "Communication" means "any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or *in connection with providing mental health or developmental disability services* to a recipient." *Id.* (emphasis added). A connection with the provision of mental health or developmental

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disabilities services is thus a prerequisite to the protections of the Confidentiality Act.

Communications made by plaintiff to his attorneys, testimony and other evidence presented in open court, and records of the proceedings in the medical malpractice action all fall outside the scope of the Confidentiality Act because these communications and records were made and kept in connection with litigation, not in connection with providing mental health services. This is precisely the distinction recognized by this Court in *Johnston v. Weil*, 241 Ill. 2d 169 (2011),

In *Johnston*, a court-appointed psychiatrist (Dr. Phyllis Amabile) conducted an independent evaluation of Heather Johnston pursuant to § 604(b) of the Illinois Marriage and Dissolution of Marriage Act to assist the court in resolving a post-dissolution custody dispute between Johnston and her first husband. *Id.* at 171. Johnston's second husband sought to subpoena Dr. Amabile for purposes of his own custody dispute with Johnston, but the circuit held that Dr. Amabile's report was not discoverable. *Id.* at 172.

Johnston subsequently sued both ex-husbands, their attorneys, and the child representatives in each proceeding alleging that the first husband and his attorneys improperly disclosed confidential information from Dr. Amabile's report to the second husband and his attorneys in violation of the Confidentiality Act. *Id.* This Court held that the

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Confidentiality Act did not apply because Dr. Amabile was not providing mental health services to Johnston:

> In the present case, Dr. Amabile was not retained as a therapist to treat plaintiffs. Rather, she was acting as an independent section 604(b) professional, whose sole function was to make an evaluation for the circuit court to consider. *Since Dr. Amabile and plaintiffs were not engaged in a therapeutic relationship, the Confidentiality Act does not apply.*

Id. at 183–84 (emphasis added).

The appellate court reached the same conclusion in *Quigg v. Walgreen Co.*, 388 Ill. App. 3d 696 (2nd Dist. 2009). In *Quigg*, the appellate court held that the Confidentiality Act did not apply to an allegedly improper disclosure of a patient's "prescription profile" via the defendant pharmacy's website. "Because Walgreen acted purely as a pharmacist, it was not engaged in a therapeutic relationship with plaintiff" and thus was "not subject to liability under the Act." *Id.* at 703.

The appellate court held precisely the opposite in this case, concluding that the existence of a therapeutic relationship was unnecessary to invoke the protection of the Confidentiality Act: "That defendants themselves were not providing [plaintiff] mental health services does not relieve them of potential liability." *Doe*, 2022 IL App (1st) 211283 at ¶ 15. (A145.) The appellate court in this case rejected *Quigg* as "unsupported by authority," *id* at ¶ 19 (A148), and did not address

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Johnston. The appellate court additionally attempted to distinguish *Quigg*, reasoning that unlike "a pharmacy-customer interaction, Doe's records and communications were created in the course of addressing Doe's mental health in the presence of physicians and nurses, who were 'therapists' under the Act." *Id.* at ¶ 18. (A148.)

The appellate court relied on *Johnson v. Lincoln Christian College*, 150 Ill. App. 3d 733 (4th Dist. 1986), for the proposition that "Illinois has permitted a claim under the Act even where the defendant was not a provider of mental health services." *Id.* at ¶ 15. (A146.) The appellate court's reliance on *Lincoln Christian College* reflects its misunderstanding regarding the scope of the Confidentiality Act. The determinative issue is the nature of the records or communications, not the professional status of the defendant. That is, the Confidentiality Act's protections do not turn on whether the defendant was a therapist or other provider of mental health or developmental disability services; rather, the Act's protections depend on whether the records or communications in question were created or made in the course of such services.

In *Lincoln Christian College*, plaintiff Gregory Johnson was enrolled in a "program to prepare him for a career teaching sacred music." *Lincoln Christian College*, 150 Ill. App. 3d at 736. Based on another student's claim that Johnson might be gay, however, the college repeatedly refused to grant him his diploma. *Id.* Relying on the college's assurances that he

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would be allowed to graduate if he sought counseling from Kent Paris, Johnson attended private counseling sessions with Paris. *Id*.

Without Johnson's consent to disclosure, Paris reported to the dean of students Thomas Ewald that Johnson "had not changed and was not progressing." *Id*. In response, Dean Ewald informed Johnson that the college intended to "hold a hearing in less than 24 hours at which Johnson would be required to defend himself against the rumor that he was" gay. *Id*. at 737. Understanding that he would be dismissed from the college regardless of what happened at the hearing, Johnson withdrew from the college. *Id.* The college held the hearing anyway, in Johnson's absence, and Dean Ewald called Johnson's mother afterwards to inform her that the college "was dismissing Johnson because he was homosexual." *Id.*

Plaintiff sued both Paris and Lincoln Christian College. *Id.* Reversing the trial court's dismissal of the college, the appellate court held that Dean Ewald violated § 5(d) of the Confidentiality Act by redisclosing Johnson's confidential communications without his consent. *Id*. at 744. The appellate court suggested that the Kaveny Defendants' post-verdict statements in this case similarly violated § 5(d) by redisclosing confidential information. *Doe*, 2022 IL App (1st) 211283 at ¶ 16. The appellate court was wrong for two reasons.

First, § 5(d) applies solely to "records and communications" as defined in the Confidentiality Act—that is, records and communications

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made or kept in the course of providing mental health services. 740 ILCS 110/2. Nothing in *Lincoln Christian College* suggests that communications made or records kept outside the context of a therapeutic relationship are subject to the protection of the Confidentiality Act. Although Dean Ewald did himself not provide mental health services to Johnson, the communications which Paris disclosed to Dean Ewald and which Dean Ewald then redisclosed to Johnson's mother were communications Johnson had made in the course of his therapeutic relationship with Paris. *Lincoln Christian College*, 150 Ill. App. 3d at 742. The evidence and testimony presented at plaintiffs medical malpractice trial, in contrast, were not records or communications made in the course of mental health services.

In addition, § 5(d) prohibits redisclosure of information by any "person or agency to whom any information is disclosed *under this Section*." 740 ILCS 110/5(d) (emphasis added). Section 5 of the Confidentiality Act addresses disclosures made "with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4" of the Confidentiality Act. 740 ILCS 110/5(a). As *Lincoln Christian College* made clear, § 5(d) prohibits redisclosure not only of information disclosed pursuant to written consent but also to disclosures for which such written consent was required but not obtained. *Lincoln Christian College*, 150 Ill. App. 3d at 744. Plaintiff has never argued, and the appellate court did not hold, that the Kaveny Defendants redisclosed

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any record or communication that had been disclosed to them pursuant to a written consent or for which written consent was required.

The appellate court instead indicated that the Kaveny Defendants had redisclosed information which had been disclosed under the authority of § 10(a)(1) of the Confidentiality Act. *Doe*, 2022 IL App (1st) 211283 at ¶ 16. (A146.) Under § 10(a)(1), "Records and communications may be disclosed in a civil… proceeding in which the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense." 740 ILCS 110/10(a)(1). According to the appellate court, "Section 10(a)(1) authorized disclosing Doe's records and communications for the medical malpractice litigation, but defendants' alleged subsequent broadcast of Doe's mental health history appears to be beyond the bounds of that proceeding." *Doe*, 2022 IL App (1st) 211283 at ¶ 16. (A146.)

To be sure, § 10(a)(1) did provide authority for parties *other than Doe* to disclose protected records and communications within the context of the medical malpractice litigation. Doe himself, however, needed no such authorization. While Doe held a "privilege to refuse to disclose and to prevent the disclosure of [his] record or communications," 740 ILCS 110/10(a), he of course had no obligation to exercise that privilege. That is, plaintiff was free to disclose his own mental health records and communications whenever and to whomever he chose.

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Plaintiff made the decision to disclose the extensive details regarding his mental health history, treatment, and ongoing struggles at the medical malpractice trial. Once disclosed in that public forum, § 10(a)(1) does not—and, arguably, could not—prohibit redisclosure of that information, whether by attorneys, the media, or simply interested observers looking to talk about a public trial.

CONCLUSION

WHEREFORE, Defendants-Petitioners, Burke Wise Morrissey & Kaveny, LLC, an Illinois Professional Limited Liability Company, and Elizabeth A. Kaveny, LLC, respectfully request that the judgment of the appellate court be reversed and that this Court affirm the trial court's judgment dismissing the Confidentiality Act claim with prejudice.

Respectfully submitted,

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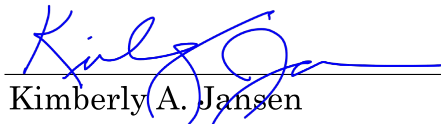
CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 315(c), 315(d) and 341 through 343. The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 315(c)(6), is 6,665 words.



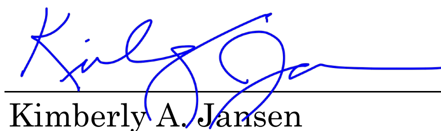
Kimberly A. Jansen

CERTIFICATE OF SERVICE

I, Kimberly A. Jansen one of the attorneys for defendants-appellants, certify that I electronically filed the foregoing Appellants' Additional Brief and Appendix with the Clerk of the Illinois Supreme Court, on April 5, 2023, via Odyssey eFileIL.

I further certify that on April 5, 2023, an electronic copy of the foregoing Appellants' Additional Brief and Appendix is being served on all counsel of record via Odyssey eFileIL.

Under penalties as provided by law pursuant to §1–109 of the Code of Civil Procedure (735 ILCS 5/1–109), I certify that the statements set forth in this instrument are true and correct.



Kimberly A. Jansen

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APPENDIX

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

TABLE OF CONTENTS TO THE APPENDIX

Complaint at Law, filed May 5, 2017 .... A1

Exh. 1 March 11, 2014 order granting leave to Burke Wise Morrisey & Kaveny to enter substitute appearance in medical malpractice action A34

Exh. 2 May 8, 2015 press release on Burk3 Wise Morrisey & Kaveny website A34

Exh. 3 May 14, 2015 Article in the Chicago Daily Law Bulletin A36

Exh. 4 Chicago Sun Times Article....................................... A37

Exh. 5 Excerpts from Burke Wise Morrisey & Kaveny website

"Our History" page of Burke Wise Morrisey & Kaveny website.. A39

"Our Attorneys" page of Burke Wise Morrisey & Kaveny website... A40

Elizabeth A. Kaveny profile on Burke Wise Morrisey & Kaveny website A42

May 8, 2015 press release on Burke Wise Morrisey & Kaveny website A45

David J. Rashid profile on Burke Wise Morrisey & Kaveny website A47

"News" page on Burke Wise Morrisey & Kaveny website.. A49

Exh. 6 December 23, 2016 email from Christopher Goodsnyder to Elizabeth A Kaveny A53

Exh. 7 February 16, 2017 Order in medical malpractice action A55

Transcript of plaintiff's testimony in underlying medical malpractice trial (Exhibit B to Defendants' 2–619.1 Motion to Dismiss)... A56

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Report of Proceedings held April 5, 2018 .... A110

Order (dismissing Count I with prejudice), entered April 5, 2018 .... A129

Order (striking amended Count I), entered October 4, 2019 .... A130

Order (denying motion to reconsider), entered August 13, 2021 .... A136

Order (allowing voluntary dismissal of remaining claim),
entered September 9, 2021) A137

Plaintiff's Notice of Appeal, filed October 7, 2021 .... A138

Opinion of the Appellate Court, issued October 7, 2022 .... A141

Table of Contents to the Record on Appeal A151

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

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DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
COOK COUNTY, IL

Attorney Number: 39611
STATE OF ILLINOIS)) ss. COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

[REDACTED], *Plaintiff*,

-vs.-

BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, DAVID J. RASHID, and ELIZABETH A. KAVENY, individually, and as agents, servants and employees of BURKE WISE MORRISSEY & KAVENY, LLC., an Illinois Professional Limited Liability Company, jointly and severally,

Defendants.

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Other Com Litigation

CASE NUMBER: 17 L

PRESIDING JUDGE:

CALENDAR:

COMPLAINT AT LAW

NOW COMES the Plaintiff, [REDACTED] (hereinafter referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and complain of the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID**, individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), as follows:

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COMMON FACTUAL ALLEGATIONS

Nature of the Parties

1. At all relevant times, Plaintiff, [redacted] (hereinafter referred to as "[redacted] was an individual who resides in Chicago, Cook County, Illinois.

2. At all relevant times, Defendant, **BURKE WISE MORRISSEY & KAVENY, LLC,** was an Illinois Professional Limited Liability Company, authorized to do business in Illinois, with its principal place of business in the City of Chicago, Cook County, Illinois (hereinafter referred to as "BWMK").

3. At all relevant times, Defendant, **DAVID J. RASHID** (hereinafter referred to as "Rashid"), was an individual who resides in Chicago, Cook County, Illinois.

4. At all relevant times, Rashid was an attorney licensed to practice law in Illinois.

5. At all relevant times, Rashid was employed as an attorney by BWMK in Chicago, Cook County, Illinois.

6. At all relevant times, Defendant, **ELIZABETH A. KAVENY** (hereinafter referred to as "Kaveny"), was an individual who resides in Chicago, Cook County, Illinois.

7. At all relevant times, Kaveny was an attorney licensed to practice law in Illinois.

8. At all relevant times, Kaveny was employed as an attorney by BWMK in Chicago, Cook County, Illinois.

9. At all relevant times, Kaveny was a member of BWMK.

10. At all relevant times, Rashid and Kaveny were agents, servants and employees of BWMK.

11. At all relevant times, Rashid, Kaveny and BWMK (hereinafter referred to collectively as "Defendants"), concentrated their practice as attorneys in the field of Plaintiff's personal injury litigation.

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12. At all relevant times, BWMK acted through its agents, servants and employees, including but not limited to Rashid and Kaveny, to practice law and represent [redacted] as his attorneys in the underlying legal matter presented to BWMK for prosecution.

13. At all relevant times, the Defendants held themselves out to the general public, including [redacted] as experts in the field of Plaintiff' personal injury litigation.

Underlying Medical Malpractice Litigation

14. On or about August 6, 2007, while admitted as an in-patient at Advocate Good Samaritan Hospital, [redacted] sustained life-threatening injuries as a result of the medical malpractice of the hospital and various physicians tasked with his care.

15. On or about July 15, 2009, [redacted] filed suit in the Circuit Court of Cook County, Illinois as Case Number: 2009 L 008290) (hereinafter referred to as "Underlying Litigation") against the Hospital and various other specifically enumerated physicians, nurses and medical providers alleging they were liable for their respective medical malpractice in failing to properly care for him.

16. [redacted] was originally represented in the Underlying Litigation by the law firm of Anesi Ozmon Rodin & Novak ("Anesi Ozmon").

17. On July 27, 2010, Anesi Ozmon was granted leave to withdraw, and Lawrence H. Hyman & Associates and Searcy L. Simpson, Jr. (*Pro Hac Vice*) were granted leave to file their appearances on behalf of [redacted] in the Underlying Litigation.

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18. The principal defendants in the Underlying Litigation remained Advocate Health and Hospitals Corporation doing business under the assumed name Advocate Good Samaritan Hospital ("Advocate Hospital"), Riverside Psychiatric and Counseling Associates, P.C. ("Riverside"), and Sapana Chokshi, M.D. ("Dr. Chokshi") (collectively referred to as the "Medical Malpractice Defendants").

19. On or about April 16, 2010, Advocate Hospital, through a routine motion ("Motion for HIPAA Protective Order"), sought the entry of a qualified protective order pursuant to 42 U.S.C. §1320(d) and 45 CFR Parts 160 and 164 ("HIPAA") to gain access to [redacted] "protected health information" ("PHI").

20. In the "Motion for HIPAA Protective Order, Advocate Hospital acknowledged that the Medical Malpractice Defendants were "covered entities" as defined by 45 CFR 160.103, which Advocate Hospital acknowledged that "HIPAA prohibits covered entities from disclosing health information in judicial proceedings other than by authorization or qualified protective order. 45 CFR §164.512(e)."

21. On or about June 9, 2010, [redacted] attorneys in the Underlying Litigation filed with the Clerk of the Court of Cook County ("Clerk"), a document entitled "Plaintiff's Answers to Defendants' Interrogatories ("Plaintiff's Answers to Interrogatories").

22. In Plaintiff's Answers to Interrogatories, [redacted]s attorneys listed [redacted]s complete home address, full birth date, and complete social security number.

23. Plaintiff's Answers to Interrogatories were filed by [redacted] attorneys with the Clerk.

24. Plaintiff's Answers to Interrogatories were not filed under seal, but where placed in the publically accessible court file.

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25. In the Answers to Interrogatories, Plaintiff's attorneys list the names of the facilities where [redacted] received medical care, the names of [redacted] treating physicians, and the dates of his treatment.

26. On or about June 18, 2010, attorneys for Riverside and Dr. Chokshi, moved the court presiding over the Underlying Litigation for the issuance of a subpoena pursuant to the Illinois Mental Health and Developmental Disabilities Act, 740 ILCS 111/10 ("IMHDDA") ("Motion for Subpoena Pursuant to IMHDDA").

27. In their Motion for Subpoena Pursuant to IMHDDA, Riverside and Dr. Chokshi's attorneys reiterated the nature of [redacted] medical conditions, the names of [redacted] medical providers, and the specific allegations of [redacted]s personal injuries.

28. On July 27, 2010, Anesi Ozmon was granted leave to withdraw, and Lawrence H. Hyman & Associates and Searcy L. Simpson, Jr. (*Pro Hac Vice*) were granted leave to file their appearances on behalf of [redacted] in the Underlying Litigation.

29. On September 1, 2010, Lawrence H. Hyman & Associates was granted leave to withdraw, and Zachary M. Bravos was granted leave to file his appearance on behalf of [redacted] in the Underlying Litigation.

30. On May 27, 2011, [redacted] counsel filed a four count First Amended Complaint on his behalf in the Underlying Litigation sounding in medical negligence.

31. On or about March 11, 2014, BWMK was granted leave to file its substitute appearance on behalf of [redacted] in the Underlying Litigation, and Searcey Simpson and Zachary M. Bravos were granted leave to withdraw. (See BWMK Substitution of Attorneys attached hereto as Exhibit 1.)

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32. At no time after being granted leave to substitute as [redacted] attorney of record in the Underlying Litigation, did the Defendants move to seal the court file or otherwise move to redact any of the PHI or personally identifying information, such as [redacted] s home address, complete date of birth, and social security number, to limit or restrict this information from the publically accessible court file in the Underlying Litigation.

33. On or about May 5, 2015, at the conclusion of the jury trial, Judge Daniel Lynch, the judge presiding over the trial in the Underlying Litigation entered a verdict in the amount of $4,243,588.00 in favor of [redacted]

34. On June 26, 2015, BWMK filed a post-trial motion entitled, "Plaintiff's Contingent Post-Trial Motion for a New Trial on Issue of Punitive Damages" ("Plaintiff Post-Trial Motion"), in which BWMK argued, *iter alia*, that the trial court erred in not permitting [redacted] to pursue punitive damages against the defendants in the Underlying Litigation.

35. In the Plaintiff's Post-Trial Motion, which was likewise filed in the Clerk's publically accessible court file, Kaveny and BWMK specifically cited numerous aspects of [redacted] PHI and his highly private and confidential mental health information governed by the IMHDDA, including quotations of statements he made to his mental health treaters in his protected medical records, as well as Sandler's treaters observations and diagnoses.

36. On or about October 15, 2015, the Underlying Litigation was dismissed with prejudice pursuant to a settlement reached with Advocate Hospital, with the court to retain jurisdiction.

37. The settlement with Advocate Hospital resulted in a substantial reduction of the amount of the jury's verdict in the amount of $4,243,588.00 in favor of [redacted] and [redacted] net recovery after litigation expenses and contingent attorney fees.

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Kaveny and BWMK Issue the Unauthorized Press Release Improperly Disclosing [redacted] Confidential Information.

38. On or about May 8, 2015, Kaveny and BWMK issued a press release disclosing the most personal and confidential information related to [redacted] mental health ("Press Release"). (See Press Release attached hereto as Exhibit 2.)

39. Kaveny's Press Release contained numerous disclosures of [redacted] confidential information, including, in pertinent part, the follow:

> A Chicago lawyer, who suffered from depression and is now permanently disabled, was awarded $4.2 million a Cook County jury after the hospital allowed him access to his boating knife where was being treated failed to confiscate his knife, and the patient attempted suicide, slashing himself more than 30 times. It was a record high reported verdict for an inpatient suicide attempt in Illinois . . . .
>
> The man, [redacted] [redacted] 63, was represented by Elizabeth Kaveny and David Rashid of the law firm of Burke Wise Morrissey & Kaveny. * * * *
>
> The verdict is the most recent of many multimillion dollar results for Kaveny, who is a partner at BWMK and has been named a Leading Lawyer in Illinois for the last 12 years. . . .
>
> The [redacted] case began in 2007, when the plaintiff was a practicing tax attorney and Certified Public Accountant. [redacted] also suffered from depression and on August 3, 2007, was admitted to Advocate Good Samaritan Hospital's emergency room after a failed suicide attempt. He was diagnosed as being severely depressed and, due to his physical and mental condition, was transferred to the intensive care unit. While there, he attempted suicide again and was sent to the inpatient psychiatric unit. * * * *
>
> Despite [redacted] identification as a highly suicidal patient, he was placed on an intermediate observation level, with instructions that he be observed very 15 minutes. Early in the morning of August 6, 2007, [redacted] removed the knife from its hiding spot and began stabbing and slashing himself on the neck and all four extremities. Although he was to be observed every 15 minutes, more than four hours passed until he was discovered – in shock, unconscious and in a pool of blood, which was splatted (sic) throughout the room. * * * *

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Sandler has a permanent brain injury resulting in loss of executive functioning. He has made a remarkable recovery over eight years and is now able to live independently, but will never be able to return to his occupation or prior level of functioning.

A comprehensive news article about the case appeared in the May 14, 2015, edition of *Chicago Daily Law Bulletin*. A reprint of the article [hyperlink] about the record verdict written by John Flynn Rooney can be viewed in pdf format.

(See Press Release attached hereto as Exhibit 2.)

40. In addition to issuing the Press Release, Kaveny also provided detailed comments on the record about Sandler when she was interviewed by John Flynn Rooney of the *Chicago Daily Law Bulletin* on or about May 14, 2015, regarding the Underlying Litigation ("Chicago Daily Law Bulletin Article"). (See Chicago Daily Law Bulletin Article as Exhibit 3.)

41. In the Chicago Daily Law Bulletin Article, Kaveny is quoted as stating, in pertinent part, as follow:

"This verdict stands for the proposition that mentally ill patients are entitled to protections from even themselves when inpatient care is sought," said Elizabeth A. Kaveny, a partner at Burke, Wise, Morrissey, Kaveny, who represented Sandler along with associate David J. Rashid. In patient suicide is 100 percent preventable with proper medical care."

* * * *

The lawyer for the hospital argued to the jury that Sandler was contributorily negligent for his injuries. But the jury determined that Sandler bore no fault for his safety during his suicide attempt [because he lacked the ability to care for himself]."

* * * *

"I believed $2 million was an inadequate offer." [Kaveny] said. "The hospital put way too much emphasis on blaming (Sandler)."

* * * *

(See Chicago Daily Law Bulletin Article attached hereto as Exhibit 3.)

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42. In addition to the direct quotes from Kaveny, the remaining content of the Chicago Daily Law Bulletin Article incorporates substantial material from the Press Release, including references to [redacted] full name, the case caption and case number, [redacted] age and profession (an attorney who "practiced tax and corporate law"), the methodology for his actions, his mental health diagnosis and hospital admission status, [redacted] subsequent mental health treatment, and living arrangements. (See *Chicago Daily Law Bulletin* Article attached hereto as Exhibit 3.)

43. In the *Chicago Daily Law Bulletin* Article, Stetson F. Atwood, an attorney for Advocate Hospital declined to comment. (See *Chicago Daily Law Bulletin* Article attached hereto as Exhibit 3.)

44. Kaveny did not have [redacted] informed consent to disclose the confidential information contained within the *Chicago Daily Law Bulletin* Article to the *Chicago Daily Law Bulletin.*

45. In addition to appearing in the *Chicago Daily Law Bulletin*, the substantive content from this article about [redacted] and the Underlying Litigation also appeared in the *Chicago Sun Times*, *My Suburban Life*, and *Patch.com.*

46. *Chicago Daily Law Bulletin*, the *Chicago Sun Times*, *My Suburban Life*, and *Patch.com.* , are news outlets with substantial readerships in the Chicagoland area.

47. Once published, such content about [redacted] published by the *Chicago Daily Law Bulletin*, the *Chicago Sun Times*, *My Suburban Life*, and *Patch.com*, was available to readers through internet searches.

48. Once published, such content about [redacted] published by the *Chicago Daily Law Bulletin*, the *Chicago Sun Times*, *My Suburban Life*, and *Patch.com*, was available to readers through internet searches of [redacted]s name.

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49. In the *Chicago Sun Times* Article, Kaveny is quoted at length saying, in pertinent part, as follows:

> [ ] was literally on the brink of death, Kaveny said.
>
> Good Samaritan had the right procedures in place when [ ] arrived in an ambulance after a pill overdose on Aug, 3, 2007, but repeatedly failed to follow those procedures, Kaveny said.
>
> * * * *
>
> Staff made a series of mistakes after [ ] arrived, including failing to find the knife in his pants pockets when he first arrived at the hospital, Kaveny said. [ ] later handed over the knife, telling hospital staff he might be tempted to use it. But [ ] secretly grabbed the knife from a storage bin when he told staff he needed to retrieve his house keys to give to his twin brother, Kaveny said.
>
> Before stabbing himself, [ ] made another suicide attempt at the hospital wrapping EKG wires and plastic tubing around his neck. That should have been a signal to staff that [ ] needed constant monitoring and a "high risk" rating, Kaveny said.
>
> Instead, [ ] got a lower rating and periodic monitoring. [ ] was still clearly suicidal, Kaveny said.
>
> "The only thing he didn't have was a plan," Kaveny said. "He was clearly telling [staff], I'm still working on it."
>
> Two days after his arrival, [ ] asked for the possessions staff had earlier confiscated. Staff brought a bin full of [ ]s things to him. The patient then removed the knife from the bin and hid it in his bed, Kaveny said.
>
> Staff were supposed to check on [ ] every 15 minutes, but failed to do so, Kaveny said. A nurse discovered [ ] in a pool of his own blood in the early morning hours of Aug. 7, four hours after he began stabbing himself, Kaveny said.
>
> "She slipped in the blood as she started to enter the room," Kaveny said. "She screamed and ran out."
>
> Instead of a relatively short stay at Good Samaritan, [ ] underwent life saving surgery there and spent more than a year at Elgin Mental Health Center, before spending another five years at a halfway house in the Uptown neighborhood.

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> [redacted] suffered brain damage as a result of the blood loss, and he no longer works as an attorney, Kaveny said.
> "As of last year, he was able to move out of the [halfway house] and into an apartment, and is living independently," Kaveny said. "He is not working or able to work, but is starting to build friendships again."
>
> (See *Sun Times* article attached hereto as Exhibit 4.)

50. In response to a cease and desist letter directed to the *Chicago Sun Times*, the *Chicago Sun Times* refused to remove the article, citing the fact that the *Chicago Sun Times* had "relied on statements [Kaveny] made to justify the noteworthy verdict and circumstances that contributed to the award."

51. Kaveny did not have [redacted] informed consent to disclose the confidential information contained within the *Chicago Sun Times* article to the *Chicago Sun Times*.

52. In response to a cease and desist letter directed to *Patch.com*, it refused to remove the article from its searchable online database.

53. The article about [redacted] was published on the *Patch.com* website remains available to online internet searchers.

54. Kaveny did not have [redacted]s informed consent to disclose the confidential information contained within the *Patch.com* article to *Patch.com*.

55. In response to a cease and desist letter directed to The B. F. Shaw printing Company d/b/a Shaw Media, who publishes *My SuburbanLife.com*, Shaw Media agreed to remove the online article about [redacted] from its online databases, but only upon receipt of a complete release of all claims and potential claims against Shaw Media and its affiliates.

56. The article about [redacted] continued to appear on *My SuburbanLife.com* until on or about March 8, 2017.

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57. Kaveny did not have [redacted] informed consent to disclose the confidential information contained within the *My Suburban Life.com* Article to the *My Suburban Life.com*.

58. On information and belief, from shortly after the issuance of the Press Release, Kaveny, Rashid, and BWMK added content to the firm's website ("BWMK Website") with specific references to [redacted] and the Underlying Litigation. (See BWMK Website attached hereto as Exhibit 5.)

59. The BWMK Website contained internal links to the *Chicago Law Bulletin* Article.

60. The BWMK Website contained internal links to the Press Release.

61. The BWMK Website contained internal links to Kaveny's biographical information.

62. The BWMK Website contained internal links to Rashid's biographical information.

63. The BWMK Website contained internal links to a detailed summary of material aspects of the Underlying Litigation, including many of the details of [redacted] s mental health treatment and diagnosis information also contained within the Press Release.

64. Following the description of the Underlying Litigation, the BWMK Website also contained a fillable form inviting potential new clients who read about the Defendants involvement in prosecuting the Underlying Litigation to contact the Defendants in order to hire the Defendants as their own attorneys.

65. The BWMK Website identified [redacted] by name and disclosed numerous highly personal aspects of his mental health care, medical and mental health diagnoses and treatment, and other protected health information ("PHI").

66. The BWMK Website identified [redacted] by name and disclosed his purported ability to function as an independent adult, his purported inability to practice law, and portrayed him in an extremely unfavorable light.

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67. At the time of the disclosure of this confidential information about [redacted] the Defendants were [redacted]s attorneys.

68. On or about December 14, 2016, [redacted] through his new counsel, demanded that the Defendants remove any reference to him or the Underlying Litigation from their website ("Cease and Desist Letter to BWMK").

69. In addition, [redacted] requested that the Defendants execute a substitution of attorneys form to be filed in the Underlying Litigation, and informed the Defendants of his intention, through new counsel, to seek a court order sealing to seal the court file in the Underlying Litigation.

70. On December 23, 2017, in an email response to [redacted] request that the Defendants execute a substitution of attorneys to permit [redacted] to move to seal the court file in the Underlying Litigation in an effort to protect [redacted] privacy ("December 23, 2017 Email from Kaveny to Goodsnyder"), Kaveny stated, in pertinent part, as follows:

> Chris:
>
> Great to hear of your representation of Mr. [redacted] and I wish him the best in getting his record sealed.
>
> Please have Mr. [redacted] execute a release of all liability against me, BWMK, my agents and employees, and Cynthia Giacchetti and I will be happy to sign any forms you like upon my return.
>
> I will be out of the state from December 26-20 for the Holidays.
>
> Cheers,
>
> Elizabeth A. Kaveny
>
> (December 23, 2017, email from Kaveny to Goodsnyder attached hereto as Exhibit 6.)

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71. In the December 23, 2017, email from Kaveny to Goodsnyder, Kaveny conditioned her willingness to execute a substitution of attorneys in order to permit [redacted] to move to seal the court file in the Underlying Litigation in an effort to protect his privacy, upon obtaining a release of "all liability against [Kaveny] [and] BWMK." (December 23, 2017 Email from Kaveny to Goodsnyder attached hereto as Exhibit 6.)

72. On January 25, 2017, notwithstanding the Defendants' refusal to cooperate in sealing the court file in the Underlying Litigation, [redacted] through his new counsel, appeared before Judge Daniel J. Lynch ("Judge Lynch"), the judge who presided over the trial, the post-trial motions, and the ultimate settlement of the Underlying Litigation on or about October 15, 2015, seeking leave to substitute as attorneys of record for [redacted] in order to have standing to seek an order sealing the court file in the Underlying Litigation.

73. Although the defendants in the Underlying Litigation were given notice of the motion, no defendant appeared to object to [redacted]s motion to substitute or otherwise filed and objection contesting the sealing of the court file in the Underlying Litigation.

74. Although none of the defendants in the Underlying Litigation appeared before Judge Lynch to oppose the sealing of the record, attorneys from BWMK appeared three separate times before Judge Lynch to actively oppose [redacted] requested relief.

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75. On February 16, 2017, after hearing the arguments of counsel, Judge Lynch entered a court order denying [redacted]s motion, expressly finding, in pertinent part, as follows:

> (1) After hearing the arguments of counsel and reviewed copies of select publically available documents from the court clerk's paper file and electronically docket document images, the Court finds that it lacks jurisdiction to grant Mr. [redacted] request for substitution of attorneys or motion to seal select documents in the court file containing personal identifying information (i.e., social security number, dates of birth, etc,) and mental health and medical records;
>
> (2) The Court finds that with the exception of retaining jurisdiction on 10/15/15 to enforce jurisdiction to enforce the terms of the underlying parties' settlement, the Court lost jurisdiction thirty days thereafter to take any other acting in this case.
>
> (See Court Order entered February 16, 2017, attached hereto as Exhibit 7.)

76. Based upon the Defendants' failure to obtain a court order sealing the Underlying Litigation court file prior to the court losing jurisdiction thirty days after the case was closed, [redacted] PHI, personally identifying information, and his highly personal medical and mental health care, treatment, and diagnoses remain readily available to any member of the general public who seek to access the clerk's records.

77. Based upon the Defendants issuance of the Press Release and providing details on the record comments to numerous media outlets that went well beyond simply confirming the outcome of the Underlying Litigation, [redacted] PHI and his highly personal medical and mental health care, treatment, and diagnoses remain readily available to any member of the general public who seek to access that information by conducting an internet search of his name.

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78. Though ██████ has made an excellent recovery from the injuries he sustained while under the care of the defendants in the Underlying Litigation, and has reopened his legal practice, due to the readily accessible highly-personal information about him that remains commonly associated with mental instability, he continues to sustain substantial economic losses from the reduction of legal client referrals and development.

79. In addition, due to the numerous stigmas and myths commonly associated with mental health, suicide, and brain injuries, ready access to this highly personal information has hindered ██████s ability with certain relationships.

COUNT I - DEFENDANTS VIOLATED THE ILLINOIS MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT.

(Count I is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

80. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations, as Paragraph 1-79 of Count I, as though fully restated herein in their entirety.

81. At all relevant times, the Defendants' conduct was governed by the Illinois Mental Health and Developmental Disabilities Confidential Act ("MHDDCA"), (740 ILCS 110/1 et seq.) (2013).

82. ██████s mental health treatment and diagnoses are confidential information protected by the MHDDCA.

83. By disseminating information regarding ██████ mental health treatment and diagnoses protected by the MHDDCA in the Press Release, on the BWMK website, and through Kaveny's comments to the *Chicago Daily Law Bulletin*, the *Chicago Sun Times*, *Patch.com*, and *MySuburbanLife.com*, the Defendants violated the MHDDCA.

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84. §15 of the MHDDCA provides that "Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act."

85. As a direct and proximate result of the Defendants' voluntary and wrongful disclosure of [redacted]s confidential information regarding his mental health treatment and diagnoses to individuals and entities beyond the parties to the Underlying Litigation, the Defendants are liable to [redacted] for damages he has sustained related thereto.

86. As a direct and proximate result of the Defendants' voluntary and wrongful disclosure of [redacted]s confidential information regarding his mental health treatment and diagnoses to individuals and entities beyond the parties to the Underlying Litigation, the Defendants are liable to [redacted] for his reasonable attorney's fees incurred in these proceedings.

WHEREFORE, the Plaintiff, [redacted] (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count I against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY,** and **DAVID J. RASHID,** individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), in a sum of money in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, together with the reasonable attorney's fees and court costs to bring said action, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

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COUNT II - DEFENDANTS ARE LIABLE FOR WRONGFUL PUBLIC DISCLOSURE OF [REDACTED] PRIVATE FACTS.

(Count II is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

87. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations and Paragraphs 80-86 of Count I, as Paragraphs 1-86 of Count II, as though fully restated herein in their entirety.

88. The Defendants disclosed private facts regarding [REDACTED]

89. The disclosure of these private facts regarding [REDACTED] was highly offensive to [REDACTED]

90. The disclosure of these private facts regarding [REDACTED] would be highly offensive to a reasonable person.

91. The private facts regarding [REDACTED] that were disclosed by the Defendants were not of a legitimate concern to the public.

92. The Defendants publicized and disclosed private facts regarding [REDACTED]

93. The facts the Defendants disclosed about [REDACTED] were private, and not public facts.

94. The facts the Defendants disclosed and made public about [REDACTED] would be highly offensive to a reasonable person.

95. As a direct and proximate result of the Defendants' voluntary and wrongful disclosure of [REDACTED]s confidential information regarding his mental health treatment and diagnoses to individuals and entities beyond the parties to the Underlying Litigation, the Defendants are liable to [REDACTED] for damages he has sustained related thereto.

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WHEREFORE, the Plaintiff, [redacted] (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count II against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID**, individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), in a sum of money in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, together with the court costs to bring said action, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

COUNT III - DEFENDANTS ARE LIABLE FOR WRONGFUL INTRUSION UPON [redacted] SECLUSION.

(Count III is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

96. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations and Paragraphs 80-95 of Count II, as Paragraphs 1-95 of Count III, as though fully restated herein in their entirety.

97. The Defendants disclosed private facts regarding [redacted]

98. The disclosure of these private facts regarding [redacted] was highly offensive to [redacted]

99. The disclosure of these private facts regarding [redacted] would be highly offensive to a reasonable person.

100. The Defendants' conduct constituted an unauthorized intrusion or prying into [redacted] seclusion.

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101. The intrusion would be offensive or objectionable to a reasonable person.

102. The intrusion was offensive and objectionable to [redacted]

103. The Defendants disclosed private facts regarding [redacted]

104. The intrusion upon [redacted] seclusion caused him anguish and suffering.

105. As a direct and proximate result of the Defendants' voluntary and wrongful intrusion upon [redacted]s seclusion, by disclosing to newspapers, including the Chicago Law Bulletin and the Chicago Sun Times, and other media outlets, and listed on the BWMK website, [redacted]s confidential information regarding his mental health treatment and diagnoses, the Defendants are liable to [redacted] for damages he has sustained related thereto.

WHEREFORE, the Plaintiff, [redacted] (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count III against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID,** individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), in a sum of money in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, together with the court costs to bring said action, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

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COUNT IV - DEFENDANTS BREACHED THEIR FIDUCIARY DUTY TO ████████

(Count IV is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

106. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations and Paragraphs 80-105 of Count III, as Paragraphs 1-105 of Count IV, as though fully restated herein in their entirety.

107. As a result of the attorney-client relationship between ██████ and the Defendants, the Defendants owed ██████ a fiduciary duty to place the interests of their client ahead of their own interests.

108. Rule 1.6(a) of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

109. Rule 1.0(e) of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternative to the proposed course of conduct.

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110. Rule 1.4 of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (a) A lawyer shall:
>
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by the Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
>
> (3) keep the client reasonably informed about the status of the matter;
>
> * * * *
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

111. Rule 1.7 of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (a) Except as provided in paragraph (b), a law shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: * * * (2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.

112. Rule 1.8(b) of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (b) A lawyer shall not use information relating to the representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

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113. Rule 1.9(c) of the Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: * * * *
>
> (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

114. The Defendants did not obtain [redacted] informed consent prior to revealing his confidential information regarding his mental and physical healthcare, treatment and diagnosis.

115. The Defendants chose to reveal [redacted]s confidential information regarding his mental and physical healthcare, treatment and diagnosis to media outlets in order to demonstrate their professional skill and competence, and in particular, their ability to prevail in a case with difficult facts and circumstances.

116. The Defendants chose to reveal [redacted]s confidential information regarding his mental and physical healthcare, treatment and diagnosis to media outlets in order to generate legal referrals from other attorneys.

117. The Defendants chose to reveal [redacted]s confidential information regarding his mental and physical healthcare, treatment and diagnosis on their firm's website in order to generate new client relationships.

118. The Defendants chose to reveal [redacted]s confidential information regarding his mental and physical healthcare, treatment and diagnosis on their firm's website in order to generate new client relationships through the "online" response form that appears in close proximity to the description of the Defendants' purportedly successful resolution of the Underlying Litigation.

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119. The Defendants chose to reveal [redacted]s confidential information regarding his mental and physical healthcare, treatment and diagnosis to media outlets after the jury verdict had already been entered, effectively concluding any aspect of the case where trial related publicity could benefit [redacted] not to benefit [redacted] but rather for self aggrandizement.

120. The Defendants disclosure of [redacted] confidential information was not authorized by law.

121. The Defendants did not take reasonable measures to prevent the disclosure of [redacted] confidential information.

122. The Defendants did not act competently to safeguard [redacted] confidential information.

123. The Defendants disclosure of [redacted] confidential information did not benefit [redacted] in anyway.

124. The Defendants disclosure of [redacted]s confidential information to media outlets and on the firm's website was not necessary to fulfill the Defendants' representation of [redacted] in the Underlying Litigation.

125. The Defendants disclosure of [redacted]s confidential information to media outlets and on the firm's website was greater than the Defendants reasonably believed to fulfill the Defendants' representation of [redacted] in the Underlying Litigation.

126. The Defendants obtained [redacted] confidential information through their representation of [redacted] in the Underlying Litigation.

127. The Defendants had an actual conflict of interest in determining whether or not to disclose [redacted] confidential information to media outlets and on the firm's website.

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128. The Defendants did not advise [redacted] to obtain independent counsel to determine whether or not to consent to the Defendants' disclosure of his confidential information to media outlets and on the firm's website.

129. Accordingly, the Defendants breached their fiduciary duties to [redacted] by placing their interests in generating new clients and attorney referrals ahead of [redacted] interests in preventing the dissemination of [redacted]s private mental and physical healthcare, treatment and diagnosis information across various print and searchable on-line media outlets, and the firm's own website.

130. [redacted] has sustained pecuniary damages to the extent that he has been hindered in resuming his legal practice by potential clients and referring attorneys being deterred from retaining him to handle their legal matters as a result of the widespread dissemination to this commonly perceived adverse information about him.

131. As a direct and proximate result and in consequence of the Defendants' various breaches of their fiduciary duties to [redacted] has sustained pecuniary damages to the extent that he has been hindered in resuming his legal practice by potential clients and referring attorneys being deterred from retaining him to handle their legal matters as a result of the widespread dissemination to this commonly perceived adverse information about him.

132. Additionally, based upon the Defendants' wrongful conduct, as described in greater detail hereinabove, the Defendants should be required to forfeit and disgorge to [redacted] any and all attorneys' fees they have generated or derived from the legal representation of clients, who relied in whole or in part, upon the publicity the Defendants generated or received by disclosing [redacted]s confidential information in the media and on the firm's website.

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WHEREFORE, the Plaintiff, ██████████ (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count IV against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID**, individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), in a sum of money in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, together with the court costs to bring said action, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

COUNT V - A CONSTRUCTIVE TRUST SHOULD BE PLACED UPON THE PROFITS THE DEFENDANTS GENERATED FROM THEIR MISCONDUCT, INCLUDING THE DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES TO ██████

(Count V is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

133. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations and Paragraphs 80-132 of Count IV, as Paragraphs 1-133 of Count V, as though fully restated herein in their entirety.

134. Rule 7.1 of the Illinois Rules of Professional Conduct provides as follows:

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

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135. The Defendants' use of select and partially inaccurate statements regarding [redacted] private mental and physical healthcare, treatment and diagnosis information in what amounted to *de facto* advertisements across various print and searchable on-line media outlets, as well as actual advertising on the firm's own website, were misleading.

136. The Defendants' conduct in revealing [redacted] private mental and physical healthcare, treatment and diagnosis information was wrongful, intentional and driven by the desire for pecuniary gain.

137. The Defendants' misconduct was driven by the desire for pecuniary gain.

138. A constructive trust should be placed upon all attorneys' fees the Defendants generated from new clients and attorney referrals that resulted from the Defendants' disclosure of [redacted]s confidential information to on-line media outlets and on the firm's own website.

139. The Defendants should have to provide [redacted] with a full accounting of all attorneys' fees the Defendants generated from new clients and attorney referrals that resulted from the Defendants' disclosure of [redacted]s confidential information to on line media outlets and on the firm's own website.

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WHEREFORE, the Plaintiff, [redacted] (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count V against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID**, individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), the Defendants should be compelled to account for all attorneys' fees they have generated from their wrongful conduct and a constructive trust should be placed upon those sums, which are reasonably likely to be in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

COUNT VI - DEFENDANTS ARE LIABLE FOR RECKLESS INFLICTION OF EMOTIONAL DISTRESS.

(Count VI is pled in the alternative pursuant to Illinois Code of Civil Procedure §2-613(b)).

140. Pursuant to Supreme Court Rule 134, Plaintiffs re-allege Paragraphs 1 through 79 of the Common Factual Allegations and Paragraphs 80-139 of Count VI, as Paragraphs 1-139 of Count VI, as though fully restated herein in their entirety.

141. The Defendants' conduct was extreme and outrageous.

142. The Defendants knew that based upon [redacted] particular vulnerabilities there was a high probability that their conduct would cause [redacted] severe emotional distress.

143. The Defendants' conduct in fact caused [redacted] severe emotional distress.

144. As a direct and proximate result of the Defendants' reckless infliction of emotional distress, [redacted] has sustained severe emotional distress.

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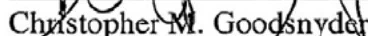
WHEREFORE, the Plaintiff, [redacted] (heretofore referred to as "Plaintiff"), by and through his attorneys, PERL & GOODSNYDER, LTD., and seeks a judgment as to Count III against the Defendants, **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, **ELIZABETH A. KAVENY**, and **DAVID J. RASHID**, individually, and as agents, servants and employees of **BURKE WISE MORRISSEY & KAVENY, LLC,** an Illinois Professional Limited Liability Company, jointly and severally (hereinafter collectively referred to as "Defendants"), in a sum of money in excess of the $50,000.00 jurisdictional *ad damnum* of this Honorable Court, or such greater or lesser sum as may be proven at trial to constitute the full extent of the Plaintiff's damages, together with the court costs to bring said action, and such further, additional and/or alternative relief as this Honorable Court and the trier of fact deems fair, just and reasonable.

Respectfully submitted on behalf of the Plaintiff;



By and through his attorneys,

PERL & GOODSNYDER, LTD.,

Christopher M. Goodsnyder

Mr. Christopher M. Goodsnyder
Mr. Allen R. Perl
PERL & GOODSNYDER, LTD.
Attorneys for Plaintiff
14 North Peoria Street
Suite 2-C
Chicago, Illinois 60607
Attorney Number: 39611
(Phone) 312.243.4500 / (Fax) 312.243.0806
cgoodsnyder@PerlandGoodsnyder.com
aperl@PerlandGoodsnyder.com

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CLERK OF THE CIRCUIT COURT - COOK COUNTY
00104014 Law-01 5/5/2017 3:52PM
ATTY: 39611 015 HARIKRPT
AD DAMNUM: $50,001.00
CASE NO: 2017L004610 CALENDAR: U
COURT DATE: 0/0/0000 12:00AM
CASE TOTAL: $598.00

12 Jurors 3	$230.00
Automation	$25.00
Document Storage	$25.00
Law Library	$21.00
Arbitration	$10.00
Base Filing Fee 6	$240.00
Dispute Resolution	$1.00
Court Services	$25.00
Children Waiting Rm	$10.00
Access Justice Fund	$2.00
e-Business	$9.00

CHECK NO: 13118

CHECK AMOUNT:	$598.00
CHANGE	$0.00
TRANSACTION TOTAL:	$598.00

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Attorney Number: 39611
STATE OF ILLINOIS)
) **SS.**
COUNTY OF COOK)

FILED 8-1
2017 MAY -5 PM 3:52

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

2017L004610
CALENDAR/ROOM U
TIME 00:00
Other Com Litigation

Plaintiff,

-vs.-

BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, DAVID J. RASHID, and ELIZABETH A. KAVENY, individually, and as agents, servants and employees of BURKE WISE MORRISSEY & KAVENY, LLC., an Illinois Professional Limited Liability Company, jointly and severally,

Defendants.

CASE NUMBER: 17 L

PRESIDING JUDGE:

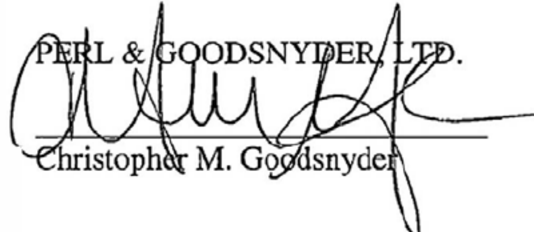
CALENDAR:

AFFIDAVIT OF DAMAGES IN COMPLIANCE
WITH ILLINOIS SUPREME COURT RULE 222(b)

Under the penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, the undersigned, on oath deposes and states that he is the principal attorney assigned to handle the litigation matters of [redacted] the Plaintiff herein, and that they verily believe that the total of money damages sought in this action **DOES** exceed $50,000.00.

Plaintiff, [redacted]

By and through his attorneys:



PERL & GOODSNYDER, LTD.

Christopher M. Goodsnyder

PERL & GOODSNYDER, LTD.
Attorneys for Plaintiff
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aperl@PerlandGoodsnyder.com

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

FILED 8 - 7
2017 MAY -5 PM 3:52
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

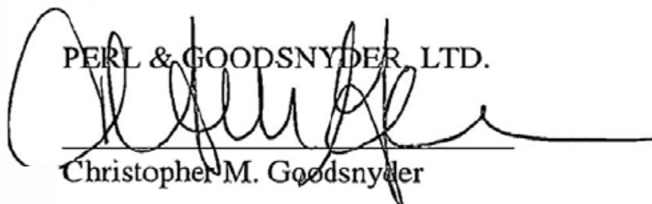
W.	)	
	)	
Plaintiff,	)	2017L004610
	)	CALENDAR/ROOM U
-vs.-	)	**CASE NUMBER: 17 L** TIME 00:00
	)	Other Com Litigation
BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, DAVID J. RASHID, and ELIZABETH A. KAVENY, individually, and as agents, servants and employees of BURKE WISE MORRISSEY & KAVENY, LLC., an Illinois Professional Limited Liability Company, jointly and severally,	)	**PRESIDING JUDGE:**
	)	**CALENDAR:**
Defendants.	)	

JURY DEMAND

The undersigned, on behalf of the Plaintiff, demands trial by a twelve (12) person jury of his peers.

Submitted on behalf of the Plaintiff,

By and through his attorneys:



PERL & GOODSNYDER, LTD.

Christopher M. Goodsnyder

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Attorneys for Plaintiff
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cgoodsnyder@PerlandGoodsnyder.com
aperl@PerlandGoodsnyder.com

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

2012 #38

████ ██████	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09 L-008290
	)	
SAPANA CHOKSHI, M.D., et al.	)	
	)	
Defendants.	)	

ORDER

This cause coming on to be heard on the motion of plaintiff, ███ ██████ for entry of an order allowing **BURKE WISE MORRISSEY & KAVENY** to substitute in as attorneys of record for plaintiff, ███ ██████ and for **LAW OFFICES OF SKIP SIMPSON** and **ZACHARY M BRAVOS LAW OFFICES** to withdraw their appearances as attorneys of record for plaintiff, ███ ██████

IT IS HEREBY ORDERED:

1. **BURKE WISE MORRISSEY & KAVENY** is granted leave to file its Substitution of Attorneys on behalf of plaintiff, ███ ██████ *instanter*;
2. **LAW OFFICES OF SKIP SIMPSON** is granted leave to withdraw as attorneys for plaintiff, ███ ██████ *instanter*; and
3. **ZACHARY M BRAVOS LAW OFFICES** is granted leave to withdraw as attorneys for plaintiff, ███ **Sandler**, *instanter*.

4219
4234
(46603)
4287
(99500)
4287
(31587)

Searcy L. Simpson, Jr.
Law Offices of Skip Simpson
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Zachary M. Bravos
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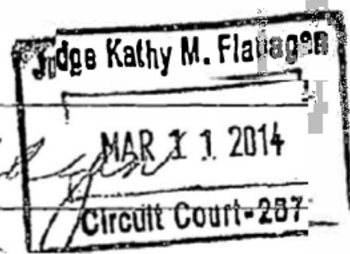
Wheaton, IL 60187
630-510 1300

Elizabeth Kaveny
Burke Wise Morrissey Kaveny LLC
161 N. Clark Street, Suite 3250
Chicago, IL 60601
312-580-2040

ENTER:

Kathy M. Flanagan

JUDGE



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Jury Awards Record $4.2 Million Verdict to Chicago Attorney Who Sued Advocate Hospital After Inpatient Suicide Attempt Left Him Disabled

May 15, 2015

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FOR IMMEDIATE RELEASE
Contact: Elizabeth A. Kaveny
(312) 580-2040

May 8, 2015

JURY AWARDS RECORD $4.2 MILLION JURY VERDICT TO CHICAGO ATTORNEY WHO SUED ADVOCATE HOSPITAL AFTER INPATIENT SUICIDE ATTEMPT LEFT HIM DISABLED

A Chicago lawyer, who suffered from depression and is now permanently disabled, was awarded $4.2 million by a Cook County jury after the hospital allowed him access to his boating knife where he was being treated, failed to confiscate his knife, and the patient attempted suicide, slashing himself more than 30 limes. It was a record high reported verdict for an inpatient suicide attempt in Illinois, far exceeding a $2.5 million verdict in a 2001 Cook County psychiatric malpractice case.

The man, [redacted] 63, was represented by Elizabeth Kaveny and David Rashid of the law firm Burke Wise Morrissey & Kaveny.

"Inpatient suicides are 100 percent preventable with proper care," said attorney Kaveny. "A hospital has the responsibility of keeping its patients safe and in a safe environment when they are most vulnerable and unable to care for themselves. Mr. [redacted] injuries are the result of a hospital not fulfilling its responsibility."

The verdict is the most recent of many multimillion dollar results for Kaveny, who is a partner at BWMK and has been named a Leading Lawyer in Illinois for the last 12 years. She was also recognized by her Illinois peers as being one of the top three women in the personal injury bar, the top five women consumer attorneys and the top 10 of all women attorneys. Kaveny was selected for the cover of *Leading Lawyers* magazine in 2012, and her case results have been featured in numerous newspaper and television stories.

The [redacted] case began in 2007, when the plaintiff was a practicing tax attorney and Certified Public Accountant. [redacted] also suffered from depression and on August 3, 2007, was admitted to Advocate Good Samaritan Hospital's emergency room after a failed suicide attempt. He was diagnosed as being severely depressed and, due to his physical and mental condition, was transferred to the intensive care unit. While there, he attempted suicide again and was sent to the inpatient psychiatric unit.

While in this unit, [redacted] realized that he had a knife in the pocket of his jeans, and he turned the knife over to an Advocate employee, warning them that he may use it to hurt himself. Instead of following hospital protocol regarding removing contraband from the unit, the employee left the knife with [redacted] other possessions in his locker. Later, [redacted] was allowed to access his possessions and recovered the knife.

Despite [redacted]s identification as a highly suicidal patient, he was placed on an intermediate observation level, with instructions that he be observed every 15 minutes. Early in the morning of August 6, 2007, [redacted] removed the knife from its hiding spot and began stabbing and slashing himself on the neck and all four extremities. Although he was to be observed every 15 minutes,

Recent News

Gallagher Named to 2016 Class of *Forty Under 40*

$20 Million Med-Mal Settlement for Lawyer's Stroke Detailed in *Chicago Tribune, Law Bulletin*

$3.5 Million Jury Verdict Involving Diagnosis Error Receives Media Coverage

David J. Rashid Honored as 2016 Emerging Lawyer

$14 Million Verdict for Plaintiffs Against Illinois' Largest Medical Insurance Carrier

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more than four hours passed until he was discovered — in shock, unconscious and in a pool of blood, which was splatted throughout the room.

[redacted] filed a lawsuit against Advocate for medical negligence, arguing also that he was unable to provide reasonable care for himse f during his time in the hospital. The trial was held before Cook County Circuit Judge Daniel Joseph Lynch. On May 5, 2015, after deliberating for less than two hours, the jury returned a unanimous verdict for the plaintiff, including finding that he was not capable of caring for himself at the time.

[redacted] has a permanent brain injury resulting in loss of executive functioning. He has made a remarkable recovery over eight years and is now able to live independently, but will never be able to return to his occupation or prior level of functioning

A comprehensive news article about the case appeared in the May 14, 2015, edition of *Chicago Daily Law Bulletin*. A reprint of the article about the record verdict written by John Flynn Rooney can be viewed in pdf format.

-End-

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Name (required)

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Website

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CHICAGOLAWBULLETIN.COM Serving Chicago's legal community for 160 years THURSDAY, MAY 14, 2015

Chicago Daily Law Bulletin

Volume 161, No. 95

Attempted suicide suit nets $4.2M

Record verdict after lawyer stabs himself during hospital stay

BY JOHN FLYNN ROONEY
Law Bulletin staff writer

A Cook County jury has awarded $4.2 million to a lawyer who stabbed himself more than 30 times at a west suburban hospital.

That amount is a record high reported verdict in Illinois for an inpatient suicide attempt.

The jury returned the verdict in favor of [redacted] and against Advocate Health and Hospitals Corp.

"This verdict stands for the proposition that mentally ill patients are entitled to protections from even themselves when inpatient care is sought," said Elizabeth A. Kaveny, a partner at Burke, Wise, Morrissey, Kaveny, who represented [redacted] along with associate David J. Rashid. "Inpatient suicide is 100 percent preventable with proper medical care."

[redacted] 63, practiced tax and corporate law.

On Aug. 3, 2007, while suffering from depression, [redacted] was admitted to the emergency room at Advocate Good Samaritan Hospital in Downers Grove for a drug overdose in a failed suicide attempt.

[redacted] was diagnosed as being severely depressed and was transferred to the intensive care unit. He attempted suicide there again by trying to hang himself and was sent to the inpatient psychiatric unit.

When [redacted] was admitted to the hospital, he had a knife in his pants pocket. After saying he might hurt himself, he gave the knife to a hospital employee.

Two days later, after [redacted] asked for his belongings so he could get his house keys to give his twin brother, a hospital employee returned [redacted] clothes to him. That action allegedly allowed [redacted] access to the knife.

In the early morning hours the next day, [redacted] used the knife to stab himself multiple times in his arms, legs, back and neck. He lost more than half of the blood in his body and was found by a nurse in shock and near death in a hospital room, Kaveny said.

He suffered a brain injury from a lack of blood and oxygen to the brain. [redacted] has memory loss and difficulty making proper judgments, Kaveny said, adding that he cannot return to practicing law again.

[redacted] spent six weeks at Advocate Good Samaritan Hospital and 10 months at the Elgin Mental Health Center.

He has lived on his own for the last two years.

In 2009, a lawsuit was filed on [redacted] behalf in Cook County Circuit Court.

The complaint alleged that the hospital violated its own rules, including one that [redacted] be observed every 15 minutes. The hospital was also accused of failing to remove [redacted] knife from the psychiatric unit and

Elizabeth A. Kaveny

from his eventual access.

The complaint also alleged that Sapana Chokshi, [redacted] attending psychiatrist, failed to appropriately assess him as a high-risk patient, which would have provided constant monitoring.

Kaveny asked jurors to award [redacted] $7.5 million in damages.

The lawyer for the hospital argued to the jury that [redacted] was contributorily negligent for his injuries. But the jury determined that [redacted] bore no fault for his injuries, Kaveny said.

The jury found last week that [redacted] was not capable of exercising ordinary care for his safety during his suicide attempt.

The jurors awarded $1,293,588 for the cost of necessary medical care, treatment and services; $700,000 for the present cash value of lost earnings and future lost earnings, $500,000 for pain and suffering; $1,250,000 for loss of a normal life and $500,000 for the disfigurement resulting from his injury.

Circuit Judge Daniel Joseph Lynch presided over the two-week trial.

The verdict is a record in Illinois, said John L. Kirkton, editor of the Jury Verdict Reporter, a division of Law Bulletin Publishing Company. The previous high award was for $2.5 million in Cook County during 2001 in a psychiatric-malpractice case.

Stetson F. Atwood, a Donohue, Brown, Mathewson & Smyth LLC partner who represented Advocate at trial, declined to comment.

Advocate issued a statement saying, "While we cannot comment on this case, our thoughts and prayers continue to be with the patient. We remain committed to providing the safest and highest quality care to every patient."

[redacted] had turned down a $2 million settlement offer from the hospital while he was represented by a Texas attorney, said Kaveny, who took the case over last year.

"I believed $2 million was an inadequate offer," she said. "The hospital put way too much emphasis on blaming [redacted]

A $100,000 settlement was reached with Chokshi's insurer just before opening statements at the trial, Kaveny said.

Chokshi's attorney, Scott D. Hammer, of counsel at Wilson, Elser, Moskowitz, Edelman & Dicker LLP, could not be reached for comment.

The case is [redacted] W. [redacted] v. *Advocate Health and Hospitals Corp., et al.*, 09 L 8290.

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$4.2 million verdict for lawyer who attempted suicide in psych ward

A downtown lawyer who stabbed himself more than 30 times in a failed suicide attempt at a west suburban hospital has won a $4.2 million verdict, after convincing a Cook County jury this week that the hospital didn't do enough to protect him.

[redacted] 63, lost more than half his blood when he tried to kill himself with a knife in the psychiatric ward at Advocate Good Samaritan Hospital in Downers Grove in August 2007, said his lawyer, Elizabeth Kaveny.

"He was literally on the brink of death," Kaveny said.

Promoted Stories from politicsChatter

The jury deliberated for about four hours Tuesday before reaching the verdict, Kaveny said.

Good Samaritan had the right procedures in place when [redacted] arrived in an ambulance after a pill overdose on Aug. 3, 2007, but repeatedly failed to follow those procedures, Kaveny said.

"While we cannot comment on this case, our thoughts and prayers continue to be with the patient. We remain committed to providing the safest and highest quality care to every patient," according to a statement from Good Samaritan.

Staff made a series of mistakes after [redacted] arrived, including failing to find the knife in his pants pockets when he first arrived at the hospital, Kaveny said. [redacted] later handed over the knife, telling hospital staff he might be tempted to use it. But [redacted] secretly grabbed the knife from a storage bin when he told staff he needed to retrieve his house keys to give to his twin brother, Kaveny said.

Before stabbing himself, [redacted] made another suicide attempt at the hospital — wrapping EKG wires and plastic tubing around his neck. That should have been a signal to staff that [redacted] needed constant monitoring and a "high risk" rating, Kaveny said.

Instead, [redacted] got a lower rating and periodic monitoring.

[redacted] was still clearly suicidal, Kaveny said.

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"The only thing he didn't have was a plan," Kaveny said. "He was clearly telling [staff], I'm still working on it."

Two days after his arrival, ██████ asked for the possessions staff had earlier confiscated. Staff brought a bin full of ███████ things to him. The patient then removed the knife from the bin and hid it in his bed, Kaveny said.

Staff were supposed to check on ██████ every 15 minutes, but failed to do so, Kaveny said. A nurse discovered ██████ in a pool of his own blood in the early morning hours of Aug. 7, four hours after he began stabbing himself, Kaveny said.

"She slipped in the blood as she started to enter the room," Kaveny said. "She screamed and ran out."

Instead of a relatively short stay at Good Samaritan, ██████ underwent life-saving surgery there and then spent more than a year at Elgin Mental Health Center, before spending another five years at a halfway house in the Uptown neighborhood.

██████ suffered brain damage as a result of the blood loss, and he no longer works as an attorney, Kaveny said.

"As of last year, he was able to move out of [the halfway house] and into an apartment, and is living independently," Kaveny said. "He is not working or able to work, but is starting to build friendships again."

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Our History

The firm of Burke Wise Morrissey Kaveny has grown carefully and selectively throughout nearly two decades, and today we rank as one of the preeminent plaintiff firms not only in Illinois but in the United States.

Kevin Burke and David Wise had been colleagues in a leading Chicago personal injury firm when, in 2002, they decided to enter partnership together in an aggressive, sophisticated litigation practice. From its beginnings our firm is one of trial lawyers who know our way around the courtroom But because we are always ready to go to court, we understand how to shape an effective settlement. Kevin is widely considered one of the top medical malpractice lawyers in Illinois, and David has an unsurpassed reputation as a leading trial lawyer.

In 2007, Frank Morrissey joined Burke and Wise following a career in complex product liability and commercial litigation as a partner at one of Chicago's pre eminent defense firms. Three years later, Elizabeth Kaveny and Brian Monico combined their personal injury practice with Burke, Wise Morrissey, having worked together in a highly respected firm that Beth co-founded and in which she earned eminence as one of the state's top women lawyers.

Together with newest member David Rashid, these six lawyers are colleagues and friends with a common purpose to serve our clients – and a record at doing so that places our firm among the very best in the country.

Our History

Our Dedication

Our Awards

Our Involvement

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Our Attorneys

Burke Wise Morrissey Kaveny is a small firm of lawyers who have major professional reputations and credentials. Our name partners are among the most highly skilled and highly regarded in Illinois, and all our lawyers are experienced in the courtroom and at the negotiating table

Kevin G. Burke

David C. Wise

Francis P. (Frank) Morrissey

Elizabeth A. Kaveny

Brian T. Monico

David J. Rashid

Kevin G. Burke

David C. Wise

Francis P. (Frank) Morrissey

Elizabeth A. Kaveny

Brian T. Monico

David J. Rashid

Michael L. Gallagher

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Michael L. Gallagher

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BWMK

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312-580-2041

Connect on LinkedIn

Follow Elizabeth on Facebook

Follow Elizabeth on Twitter

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Chicago, IL 60601 3330

Elizabeth Kaveny during her professional career has obtained numerous verdicts and settlements of plaintiff personal injury and professional malpractice actions, each in excess of $1 million and some at more than $10 million. She is widely respected for her success at securing just compensation for her clients in such complex, medically related matters as misdiagnosis and failure to diagnose, which carry a high burden of proof to demonstrate negligence For example, she and partner Kevin Burke secured a $12 million settlement from a Glenview, Illinois, hospital for a client who suffered severe injury and trauma due to misdiagnosis and delayed treatment. She was one of the first attorneys in the country to file suit against New England Compounding Center (NECC) in Massachusetts on behalf of a number of victims in the outbreak of fungal meningitis traced to contaminated steroid injections Beth is equally effective in proving liability to secure redress for clients' injuries and medical expenses sustained from the negligence of others that contributed to falls, fires and vehicular accidents.

Such clients value Beth's personal approach to building a working relationship with them As a self-described "people person," Beth strives to build the kind of trust accorded a family member, visiting clients in their homes and learning about their families and situations in detail. She emphasizes knowing her clients thoroughly, to build the foundation for the kind of credibility that leads to trial effectiveness Because she is representing clients and families who have suffered major injury and loss, Beth approaches personal injury litigation as the opportunity to ensure that those who depend on her are not victimized by the legal system. Although she is always open to and effective at resolving a matter short of trial if it is in her client s best interest to do so, Beth has an exceptional record of success in the courtroom. An important element of that success is her ability to blend time tested trial skills with the application of innovative technology (including pioneering use of PowerPoint presentations) to help juries better understand key issues

Her professional peers accord Beth the highest recognition for her litigation effectiveness The peer selected *Leading Lawyers* has named her one of the state s Top 10 women litigators Top 10 women personal injury lawyers and Top 10 women consumer lawyers in personal injury and professional malpractice law. She has also been named one of the Top 50 Illinois Women Lawyers by Illinois *Super Lawyers* In 2013 Beth was designated by Thomson Reuters and *Chicago Magazine* as one of "The Top Women Attorneys in Illinois" in the areas of personal injury plaintiff – medical malpractice; personal injury plaintiff general, and general litigation Such recognition reflects the fact that she has received *Super Lawyer* designation by her professional peers in every year beginning in 2006

In a profile of Beth, the *Chicago Tribune* noted that "Chicago s most powerful medical malpractice plaintiff s law firms rarely have women as named partners, but she became a founding name partner of her own firm after just 10 years in practice, and joined Burke Wise Morrissey Kaveny as a named partner in 2010. Further emphasizing such accomplishments, *Crain s Chicago Business* in

Kevin G. Burke

David C. Wise

Francis P. (Frank) Morrissey

Elizabeth A. Kaveny

Brian T. Monico

David J. Rashid

Michael L. Gallagher

Elizabeth's Successes

$4.2 Million Jury Verdict for Inpatient Suicide Attempt

$6.75 Million Brain Damage Settlement

$890,000 Malpractice Settlement for Infant's Partial Penile Amputation

$895,454.54 Malpractice Settlement Reached in Placental Abruption Infant Death

$10 Million Settlement for Misdiagnosed Brain Injury that Resulted in Paraplegia

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Elizabeth in the News

$14 Million Verdict for Plaintiffs Against Illinois' Largest Medical Insurance Carrier

$5 Million Birth Injury Settlement Reached by BWMK's Kevin Burke, Elizabeth Kaveny Over Canceled Test

BWMK Partner and River Forest Resident Elected First Vice President of Illinois Bar Foundation

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2013 singled out Beth among established Chicago personal injury lawyers under the age of 50 for having an active trial practice. noted her as "an exception to the general rule [that] ... not many top personal injury attorneys are women," and listed four recent successes in which she secured well over $20 million on behalf of her clients.

Perhaps equally important is that Beth's record of accomplishment coincides with her personal responsibilities as a parent of four young children. which contributes to the empathy she brings in counseling the families that seek her help.

Beth is involved in a wide range of professional activities. She has served in leadership positions in the Illinois Trial Lawyers Association and is President and a member of the board of directors of the Illinois Bar Foundation, and she serves on the nominating committees of both organizations to help select their future leadership She has been a director of the Women's Bar Association of Illinois and frequently speaks on litigation-related topics before those and other organizations In 2013 Beth was among a select group of lawyers named to a bipartisan screening committee that will help select Circuit Court judges for appointment to fill interim vacancies on the Cook County Circuit Court. Beth is a Fellow of the prestigious International Society of Barristers. She has taught courses at the National Institute of Trial Advocacy and. for more than 15 years, has been both an instructor in trial advocacy at Loyola University of Chicago Law School and an adjunct professor of trial advocacy at Northwestern University Law School. Beth served as President of the Chicago Chapter of the American Inns of Court for the organization's 2014 to 2015 membership year. In October 2014 Beth was one of five women to receive the Women's Bar Association of Illinois' 2014 Top Women Lawyers in Leadership award.

Women Illinois

Elizabeth A. Kaveny

Elizabeth A. Kaveny

Professional Recognition

- 2015 Leading Lawyers Top 10 Women Lawyers in Illinois Personal Injury Lawyers, Litigators Lawyers, Consumer Lawyers 2014 Best Lawyer: Personal Injury – Medical Malpractice
- 2014 – WBIA Top Women Lawyers in Leadership Award
- 2014 – Best Lawyer – Personal Injury – Medical Malpractice
- 2014 – Illinois Leading Lawyers- Top 10· Women Lawyers. Women Consumer Lawyers. Women Litigators. Women Personal Injury Lawyers
- 2014 Illinois SuperLawyers Top 50 Women Lawyers (10 Years)
- *2013 – Crain's Chicago Business* -Top Five Attorneys Personal Injury Industry
- Selected to SuperLawyers 2006 present

Professional Organizations

- Illinois Bar Foundation President 2016-'17
- Illinois Bar Foundation – First Vice President – 2015-'16
- Illinois Trial Lawyer Association – Treasurer – 2015-'16
- Chicago Inn of Court President 2014-'15
- Illinois Bar Foundation– Second Vice President & Nominating Committee – 2014-'15
- Illinois Trial Lawyers Association Parliamentarian & Board of Managers Member 2014-'15
- International Society of Barristers – Fellow – 2014

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- Women's Bar Association of Illinois – Previous Board & National Committee Member
- Chicago Bar Association

Pro Bono

- Mercy Home for Boys and Girls – Leader Council

Education

- Case Western Reserve University School of Law, J.D., *cum laude*, 1992
- Lehigh University, B.S., economics, 1988

Admissions

- Illinois, 1992
- U.S. District Court, Northern District of Illinois
- U.S. Seventh Circuit Court of Appeals

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BWMK

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Jury Awards Record $4.2 Million Verdict to Chicago Attorney Who Sued Advocate Hospital After Inpatient Suicide Attempt Left Him Disabled

May 15, 2015

Share 5 Tweet Like 5

FOR IMMEDIATE RELEASE
Contact: Elizabeth A. Kaveny
(312) 580-2040

May 8, 2015

JURY AWARDS RECORD $4.2 MILLION JURY VERDICT TO CHICAGO ATTORNEY WHO SUED ADVOCATE HOSPITAL AFTER INPATIENT SUICIDE ATTEMPT LEFT HIM DISABLED

A Chicago lawyer, who suffered from depression and is now permanently disabled, was awarded $4.2 million by a Cook County jury after the hospital allowed him access to his boating knife where he was being treated, failed to confiscate his knife, and the patient attempted suicide, slashing himself more than 30 times. It was a record high reported verdict for an inpatient suicide attempt in Illinois, far exceeding a $2.5 million verdict in a 2001 Cook County psychiatric malpractice case

The man, [redacted], 63, was represented by Elizabeth Kaveny and David Rashid of the law firm Burke Wise Morrissey & Kaveny.

"Inpatient suicides are 100 percent preventable with proper care," said attorney Kaveny. "A hospital has the responsibility of keeping its patients safe and in a safe environment when they are most vulnerable and unable to care for themselves. Mr. [redacted]'s injuries are the result of a hospital not fulfilling its responsibility."

The verdict is the most recent of many multimillion dollar results for Kaveny, who is a partner at BWMK and has been named a Leading Lawyer in Illinois for the last 12 years. She was also recognized by her Illinois peers as being one of the top three women in the personal injury bar, the top five women consumer attorneys and the top 10 of all women attorneys. Kaveny was selected for the cover of *Leading Lawyers* magazine in 2012, and her case results have been featured in numerous newspaper and television stories.

The [redacted] case began in 2007, when the plaintiff was a practicing tax attorney and Certified Public Accountant. [redacted] also suffered from depression and on August 3, 2007, was admitted to Advocate Good Samaritan Hospital's emergency room after a failed suicide attempt. He was diagnosed as being severely depressed and, due to his physical and mental condition, was transferred to the intensive care unit. While there, he attempted suicide again and was sent to the inpatient psychiatric unit.

While in this unit, [redacted] realized that he had a knife in the pocket of his jeans, and he turned the knife over to an Advocate employee, warning them that he may use it to hurt himself. Instead of following hospital protocol regarding removing contraband from the unit, the employee left the knife with [redacted]'s other possessions in his locker. Later, [redacted] was allowed to access his possessions and recovered the knife.

Despite [redacted]'s identification as a highly suicidal patient, he was placed on an Intermediate observation level, with instructions that he be observed every 15 minutes. Early in the morning of August 6, 2007, Sandler removed the knife from its hiding spot and began stabbing and slashing himself on the neck and all four extremities. Although he was to be observed every 15 minutes

Recent News

$3.5 Million Jury Verdict Involving Diagnosis Error Receives Media Coverage

David J. Rashid Honored as 2016 Emerging Lawyer

$14 Million Verdict for Plaintiffs Against Illinois' Largest Medical Insurance Carrier

Monico Named Partner at Burke Wise Morrissey Kaveny

$5 Million Birth Injury Settlement Reached by BWMK's Kevin Burke, Elizabeth Kaveny Over Canceled Test

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more than four hours passed until he was discovered — in shock, unconscious and in a pool of blood, which was splatted throughout the room.

[redacted] filed a lawsuit against Advocate for medical negligence, arguing also that he was unable to provide reasonable care for himself during his time in the hospital. The trial was held before Cook County Circuit Judge Daniel Joseph Lynch. On May 5, 2015, after deliberating for less than two hours, the jury returned a unanimous verdict for the plaintiff, including finding that he was not capable of caring for himself at the time.

[redacted] has a permanent brain injury resulting in loss of executive functioning. He has made a remarkable recovery over eight years and is now able to live independently, but will never be able to return to his occupation or prior level of functioning.

A comprehensive news article about the case appeared in the May 14, 2015, edition of *Chicago Daily Law Bulletin*. A reprint of the article about the record verdict written by John Flynn Rooney can be viewed in pdf format

-End-

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David J. Rashid

djr@bwmklaw.com

312-580-2040

312 580-2041

161 North Clark Street
Suite 3250
Chicago, IL 60601-3330

David Rashid focuses his practice on personal injury and medical malpractice work. He has been involved in medical malpractice cases focused on misdiagnosis, birth injuries, emergency room errors and medication errors, as well as in transportation accident and trucking negligence cases. He has tried four jury trials to verdict, including a record setting verdict for an in-patient attempted suicide case which resulted in a $4.25 million dollar plaintiff verdict. Since 2015, he has assisted in securing over $9 million in settlements for his clients.

David has also focused his work on extensive motion practice. He has enjoyed success at both the Circuit and Appellate Court level and has aided in pre-trial preparation for cases resulting in over $30 million in settlements.

David has a solid litigation background, having been a member of the Office of the Chief Prosecutor for the U.S. Office of Military Commissions. The Office of the Chief Prosecutor coordinates investigative efforts, prepares charges and represents the United States before military commissions.

In 2016, Law Bulletin Publishing Company, through its Leading Lawyers division, named David an Emerging Lawyer. The designation is reserved for less than 2 percent of registered Illinois lawyers, all of whom are age 40 or younger unless they have been licensed for no more than a decade. Emerging Lawyers are selected by Illinois Leading Lawyers for best exhibiting the "exceptional character" and "outstanding aptitude" required to succeed in the profession.

Professional Associations

- Illinois State Bar Association
- Chicago Bar Association
- American Association for Justice (formerly Association of Trial Lawyers of America)
- Illinois Trial Lawyers Association
- Co-author, "A Consulting Expert Switching Sides Mid-Litigation: Minimizing the Risk and Barring the Expert (and his Lawyer)." Trial Journal, Summer 2013 (vol. 15, no. 2).

Prior Experience

- U.S. Office of Military Commissions, Office of the Chief Prosecutor (judicial clerkship)

Professional Recognition

- Emerging Lawyer, 2016

Education

- George Mason University School of Law, J.D., 2010

Kevin G. Burke

David C. Wise

Francis P. (Frank) Morrissey

Elizabeth A. Kaveny

Brian T. Monico

David J. Rashid

Michael L. Gallagher

David's Successes

$475,000 Wrongful Death Settlement for Negligently Inserted Gastrostomy Tube

$325,000 Wrongful Death Settlement for Nursing Home Patient, 91, Dropped From Lift

$2 Million Settlement for Brain Damage and Quadriplegia Due to Medical Negligence

View More Successes

David in the News

$20 Million Med-Mal Settlement for Lawyer's Stroke Detailed in *Chicago Tribune, Law Bulletin*

David J. Rashid Honored as 2016 Emerging Lawyer

BWMK's Kevin G. Burke, David J. Rashid Co author Article on Strokes in *Trial Journal*

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- Miami University (Oxford, Ohio), B.A., 2007

Admissions

- Illinois, 2011
- U.S. District Court, Northern District of Illinois

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News

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CHICAGO — Elizabeth A. Kaveny, of River Forest, a partner with the Chicago law firm of Burke Wise Morrissey & Kaveny, has been elected as ...

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BWMK's Kevin G. Burke, David J. Rashid Co-author Article on Strokes in *Trial Journal*

Attorneys Kevin G. Burke and David J. Rashid of Burke Wise Morrissey Kaveny have co authored with another local attorney an article about strokes in the...

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BWMK's Wise, Monico Land $11 Million Verdict for Brain-Injured Man After Court-Ordered Retrial

FOR IMMEDIATE RELEASE June 8, 2015 Contact: David Wise, (312) 580-2040 $11 Million Verdict for Brain-injured Man After U.S. Court of Appeals Orders Retrial A...

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$4.2 Million Jury Verdict for Inpatient Suicide Attempt

$4.2 Million

[redacted] v Advocate Good Samaritan Hospital

David J. Rashid, Elizabeth A. Kaveny

A severely depressed and highly suicidal 63-year-old psychiatric unit inpatient accessed his boating knife and attempted suicide while at Advocate Good Samaritan Hospital. The practicing tax lawyer and CPA was admitted to the hospital's emergency room after a failed suicide attempt. While in the intensive care unit, he attempted suicide again and was then transferred to the psychiatric unit. Upon entering it, the patient turned over his knife to an Advocate employee with a warning that he might use it to hurt himself. Despite the hospital's protocol, the employee did not confiscate the contraband. Instead, t remained with the patient's other possessions in his locker at a time when he was incapable of caring for himself. Early one morning, the patient removed the knife from its location and began slashing himself on the neck and on all four extremities. Although he was supposed to be observed every 15 minutes, more than four hours passed from the time he injured himself until he was discovered in shock, unconscious and in a pool of blood. A permanent brain injury resulting in loss of executive functioning resulted, and he is now disabled and cannot return to his occupation or prior level of functioning

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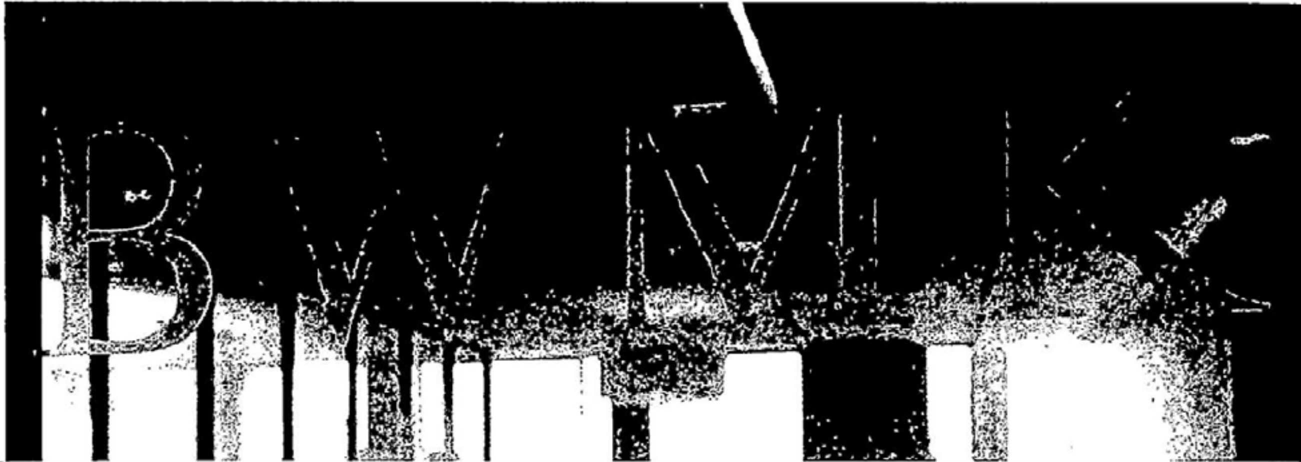

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Prior to the firm's opening in January, 2002, Kevin Burke and David Wise worked on many of the cases included in this website while at the lawfirm of Corboy and Demetrio, and in some cases in conjunction with attorneys at Corboy and Demetrio Kevin, Dave Frank, and Elizabeth have also worked together on a number of cases included in this Web site

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Frank Morrissey is the attorney responsible for the Web Page. Burke Wise Morrissey Kaveny is located in Chicago, Illinois.

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Christopher Goodsnyder

From:	Elizabeth A. Kaveny
Sent:	Friday, December 23, 2016 3:26 PM
To:	Christopher Goodsnyder
Cc:	Allen Perl; David J. Rashid; Cindy Giacchetti
Subject:	Re: [redacted] v. Sapana Chokshi, M.D., et al. Case Number: 09 L 008290 12-20-16

Chris:

Great to hear of your representation of Mr. [redacted] and I wish him the best in getting his record sealed.

Please have Mr. [redacted] execute a release of all liability against me, BWMK, my agents and employees, and Cynthia Giacchetti and I will be happy to sign any forms you like upon my return.

I will be out of the state from December 26 30 for the Holidays.

Cheers,

Elizabeth A. Kaveny
BWMK
161 N. Clark Street, Suite 3250
Chicago, IL 60601
(312) 580-2040
www.bwmklaw.com

From: Christopher Goodsnyder <cgoodsnyder@perlandgoodsnyder.com>
Date: Tuesday, December 20, 2016 at 4:30 PM
To: Elizabeth Kaveny <eak@bwmklaw.com>
Cc: "cgoodsnyder@perlandgoodsnyder.com" <cgoodsnyder@perlandgoodsnyder.com>, Allen Perl <aperl@perlandgoodsnyder.com>
Subject: [redacted] v. Sapana Chokshi, M.D., et al. Case Number: 09 L 008290 12-20-16

Dear Ms. Kaveny;

As discussed in my prior written correspondence that was delivered to you via Fedex on December 15, 2016, our firm represents [redacted]

Mr. [redacted] has asked our firm's assistance to move the trial court in the above referenced matter to seal the record to help protect his privacy, his personal identifying information, and to aid his efforts to restore his reputation.

I requested your cooperation in this process by taking several actions, which included executing the Substitution of Attorneys form.

To date, I have not received an executed copy of the Substitution of Attorneys form.

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Please take this opportunity to sign and return the Substitution of Attorneys form attached to the draft Motion for Substitution of Attorneys (attached hereto).

Additionally, we would renew our request that you immediately remove any publically accessible references to Mr. ██████ and/or the case you handled on his behalf, from your firm's website, as well as from and any and all other social media profiles, accounts, applications and/or websites.

Thank you in advance for your anticipated cooperation.

In the event we do not receive an executed Substitution by the close of business on December 22, 2016, we will move forward with the motion, with the addition of a reference to the fact that you declined our several requests to sign and return the Substitution of Attorneys.

Best regards,

Chris

Christopher M. Goodsnyder
Perl & Goodsnyder, Ltd.
14 North Peoria Street
Suite 2-C
Chicago IL 60607
312-243-4500 Phone / 312 243-0806 Fax
CGoodsnyder@perlandgoodsnyder.com

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Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

[redacted]
v. Plaintiff

Sapana Chokshi, MD., et al
Defendants

No. 09 L 8296

ORDER

This cause coming on to be heard on the Motion of [redacted] Plaintiff, to substitute the Law firm of Perl & Goodsnyder, Ltd as his attorneys of record for his prior attorneys of record, Burke Wise Morrissey and Kaveny ("BWMK"). Counsel Christopher H. Goodsnyder of Perl & Goodsnyder, Ltd. ("P&G") present and David Wise of BWMK present. Due notice having been given all interested parties and the Court being fully advised in the premises. It is hereby ordered as follows:

① After hearing the arguments of counsel and reviewed copies of select publically available documents from the court clerks paper file and electronically docket document images, the Court finds that it lacks jurisdiction to grant [redacted] request for substitution of attorneys or motion to seal select documents in the Court file containing personal identifying information (ie, social security number, dates of birth, etc) and mental health and medical records:

② The Court finds that with the exception of retaining jurisdiction on 10/15/15 to enforce the terms of the underlying parties' settlement, the Court * lost jurisdiction thirty days thereafter to take any other action in this case.

Attorney No.: 39611
Name: Perl & Goodsnyder Ltd.
Atty. for: Philip Sandler
Address: 14 N. Peoria St., Suite 2-C
City/State/Zip: Chicago, IL 60607
Telephone: 312/243-4500

ENTERED:

Judge Daniel Joseph Lynch

Dated: FEB 16 2017

Circuit Court - 1769

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
4
[redacted] W. [redacted])
5)
Plaintiff,)
6)
vs.) No. 09 L 8290
7)
SAPANA CHOKSHI, M.D.,)
8 individually and as agent)
of ADVOCATE HEALTH AND)
9 HOSPITALS CORPORATION, a)
corporation d/b/a ADVOCATE)
10 GOOD SAMARITAN HOSPITAL and)
as agent of RIVERSIDE)
11 PSYCHIATRIC AND COUNSELING)
ASSOCIATES, P.C., a)
12 corporation, et al.,)
)
13 Defendants.)

14 Report of proceedings had at the trial in the

15 above-entitled cause before the HONORABLE DANIEL J.

16 LYNCH, Judge of said Court at Richard J. Daley Center,

17 50 West Washington Street, in Room 2110, Chicago,

18 Illinois, commencing at 9:00 a.m. on April 30th, 2015.

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1 APPEARANCES:

2

BURKE WISE MORRISSEY & KAVENY, LLC
3 MS. ELIZABETH A. KAVENY
MR. DAVID J. RASHID
4 161 North Clark Street
Suite 3250
5 Chicago, Illinois 60601-3330
Phone: 312.580.2041
6 E-mail: eak@bwmklaw.com
E-mail: djr@bwmklaw.com
7
on behalf of the Plaintiff;
8
DONOHUE, BROWN, MATHEWSON & SMYTH LLC
9 MR. STETSON F. ATWOOD
MR. TIMOTHY L. HOGAN
10 140 South Dearborn Street
Suite 800
11 Chicago, Illinois 60603
Phone: 312.422.0900
12 E-mail: stetson.atwood@dbmslaw.com
E-mail: timothy.hogan@dbmslaw.com
13
on behalf of the Defendant,
14 Advocate Good Samaritan Hospital.

15
ALSO PRESENT: Mr. Colin Hubbard,
16 Burke Wise Morrissey & Kaveny

17

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1 I N D E X

2 WITNESS PAGE

3 JAMES RADKE
Direct Examination by Mr. Rashid.. 4

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4 Cross-Examination by Mr. Hogan.... 32
Redirect Examination 43
5 by Mr. Rashid................
Recross-Examination 47
6 by Mr. Hogan.................
Further Redirect Examination 47
7 by Mr. Rashid................

8 [redacted]
Direct Examination By Ms. Kaveny..... 49
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1 (WHEREUPON, the following proceedings
2 were had in court in the presence
3 of the jury.)
4 THE COURT: Could you raise your right hand to be
5 sworn?
6 (Witness sworn.)

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1 ultimate success, but just, you know, once in a while I
2 think where would they be without me today? That's not
3 true. I'm sure they would have been very fine without
4 me, but it's a true story.
5 Q. Tell the jury how you felt about being a tax
6 attorney here in the city of Chicago.
7 A. Well, I did other things besides -- that was
8 my area of expertise because I taught for the Illinois
9 CPA Society. I do seminars. They just paid for
10 expenses but I did other stuff.
11 I'm sorry, what was your question again? What
12 did it feel like?
13 Q. Yeah. How did you feel -- personally how did
14 it make you feel about yourself to be a Certified Public
15 Accountant and a licensed attorney here in Chicago?
16 A. Yeah, I didn't -- I never really worked as an
17 accountant. You wouldn't want me auditing your books.
18 It was great. I mean, I was on LaSalle
19 Street, had a nice office. I know you hear bad things
20 about attorneys, but most of them are pretty good.
21 Q. Present company excluded?
22 A. You're -- no, she's wonderful.
23 And you know, it 's -- you know, law is
24 interesting, you know. Anybody can talk about it, you

1 know. I'm -- I watch, you know, law shows on TV. It's
2 fun. I never -- almost -- most days. I mean not every

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3 day. But it just wasn't like going to work. I liked
4 it.
5 Q. [redacted] what I want you to try and tell the
6 ladies and gentlemen of the jury is what it meant to you
7 to be a lawyer, how it made you feel about yourself?
8 A. A lot of truth to it. Law becomes your
9 mistress. It's very seductive. It's who I was. It was
10 my identity. It's who I was known as. I mean, nobody
11 would ever say Phil. They would say [redacted] the attorney.
12 Or they'd introduce me to them. I don't know. It just
13 becomes part of you. At least it became part of me.
14 Q. How would you describe your life before 2016?
15 This jury has never met you.
16 THE COURT: 2006?
17 MS. KAVENY: I'm sorry. Thank you.
18 THE WITNESS: 2006.
19 BY MS. KAVENY:
20 Q. Before 2006. This jury has never met you.
21 They've heard a lot about you from your doctors, from
22 your brother, from your clients, from your friends --
23 they're going to -- but from you, how would you describe
24 your life before 2006?

1 A. I haven't been asked that. I had my own
2 business. I don't know. Things were going all right.
3 I had a pretty nice boat. I had a lot of friends. It
4 was good and the life was good.
5 Q. Okay. In 2007 did you start to have some

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6 struggles?
7 A. Oh, yeah.
8 Q. Okay. And tell the jury what you remember
9 about those early months, those first six months of
10 2007. What was going on in your life?
11 A. I was mostly working during that time. I was
12 having a pretty good year, but it started with I would
13 get these troubling dizzy spells. Not light-headed.
14 They call it vertigo where the room is actually
15 spinning. You know, when you were a kid and you go on
16 one of those the merry-go-rounds or get up roller
17 coaster?
18 And it wasn't bad at first. It was
19 troublesome, but it wasn't -- you know, it would go away
20 rather -- after a couple hours at first.
21 Q. At first. And then what?
22 A. It started increasing in length -- length and
23 frequency. I mean -- yeah.
24 Q. Have you had before 2007 a history of bouts

1 with anxiety or depression?
2 A. I'm sorry, you're going to have to clarify
3 that a little bit.
4 Q. Sure. From the time you were young, not that
5 you're not young now, from the time --
6 A. I'm not that old.
7 Q. -- you were in your adolescence in your early
8 20s until the time that you were 50, did you have

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9 periods where you dealt with anxiety and depression?
10 A. I had my ups and downs. I had a panic -- I'd
11 have -- I don't know -- you know, a panic attack now and
12 then in high school, and that was really problematic.
13 It just came on. I don't know why. And I finally found
14 an effective treatment for it, and I never really at
15 least in my mind had a full-blown panic attack since
16 then, but I would take care of it.
17 Q. And from the time you were 20 until the time
18 you were 50, when you were having bouts of anxiety or
19 depression, did you get help?
20 A. Yes.
21 Q. How?
22 A. Well, I needed to get my antianxiety pills to
23 keep my -- I didn't want another panic attack in my
24 life. They're horrible. And so I would have to go see,

1 you know, someone who prescribed -- a psychiatrist. So
2 it would be anywhere from two -- normally from two to
3 four times a year, whatever I had to do to get my -- to
4 checkup on you, how you doing. I needed to get the
5 prescription refilled.
6 Q. Did it ever stop you from --
7 A. I mean, if I had an issue I would go, you
8 know, talk to -- if I felt I was not dealing with
9 something.
10 Q. You would go to therapy and have --
11 A. Yeah.

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12 Q. -- and talk more if you needed it?
13 A. It wasn't, like, lay me down on a couch.
14 Figure out usually after one session or something.
15 Q. Did it ever stop you from getting your
16 education?
17 A. No.
18 Q. Did it ever stop you from working?
19 A. No.
20 Q. Did it ever stop you from successfully
21 representing your clients for 30 years?
22 A. No, no.
23 Q. Were you ever prior to 2007 in patient at any
24 hospital or mental hospital for anxiety or depression?

1 A. No, no.
2 Q. Had you ever attempted suicide?
3 A. No.
4 Q. Did it prevent you from scuba diving?
5 A. No.
6 Q. Did it prevent you, as we heard from your
7 brother, from becoming a Master Scuba Diver?
8 A. No. I took the same one as the fire
9 department.
10 Q. Did it ever prevent you from restoring the
11 boat that we heard about from your brother and you loved
12 so much?
13 A. No.
14 Q. Did your anxiety and depression that you had

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15 bouts of from your late adolescence, early 20s, until
16 the time you were in your early 50s, did it interfere
17 with you having a full and happy life?
18 A. No. I mean, I've always been -- I never had
19 enough minutes in the day. That's the kind of guy I am.
20 Does that answer your question?
21 Q. Yes. Okay.
22 So let's talk about August of 2007.
23 A. August?
24 Q. Right.

1 A. Okay.
2 Q. Probably the last thing you want to talk
3 about?
4 A. Yeah.
5 Q. But it's what we're here to talk about.
6 On August 3rd, 2007, you attempted suicide?
7 A. That's correct.
8 Q. By overdose?
9 A. Yeah, I took a lot of pills.
10 Q. Why?
11 A. I don't know the exact day, but leading up to
12 that -- a lot of this is recollection. I had reviewed
13 some records. I think somewhere around -- I thought it
14 was originally the end of April, but it was probably
15 in -- sometime in May I became chronically vertigo. It
16 was just I'd get up in the middle of the night, I -- it
17 was -- there would be good days and bad days, but just

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18 it was always there.

19 Q. Did you also have stressors going on in your

20 life that we heard about from your doctors? You had a

21 relationship, a woman that you cared about, and that had

22 ended?

23 A. That had ended, like, in January.

24 Q. Okay. You also had some concerns about moving

1 your practice from the city to the suburbs. That was a

2 big decision?

3 A. Yeah. I mean, yeah. Yes. Yeah. I mean,

4 yeah. I'm not big on moving.

5 Q. You were -- had some concerns about your

6 business?

7 A. As I got -- when? When I got sick?

8 Q. In 2007.

9 A. Oh, yeah.

10 Q. And so in your mind was it the vertigo, the

11 dizziness that made it intolerable?

12 A. There's no question in my mind now.

13 Q. Tell us what happened when you went to

14 Advocate Good Samaritan Hospital.

15 A. The first time?

16 Q. In August.

17 A. In August. I had -- I had three real -- I

18 don't know if it's -- when you say bad days, I mean, I

19 had three days where it was a process. You don't get up

20 one day and decide you're going to kill yourself. I was

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21 getting -- it just hadn't been getting better, and it
22 was for three days. I just couldn't get out of bed. I
23 had to keep my head in, like, one position. It was
24 just -- you know, I'm not one to exaggerate. It was

1 nightmarish. I was sick. I was physically sick. And I
2 just -- I don't know what they call it -- at the end of
3 the rope. I don't know what the right expression is. I
4 kept getting really --
5 Q. After you took the pills on that August 3rd,
6 you called 911?
7 A. Yeah.
8 Q. Why?
9 A. Yes.
10 I don't know. It's like I jumped off a
11 50-story building and halfway down I said, "This is a
12 bad idea," you know? You know, I was a little
13 embarrassed I did that to myself.
14 So I just called -- I couldn't stand up, so
15 they took me by ambulance to the nearest hospital. At
16 the time I was living in -- by 83 and 22nd, Oakbrook
17 Terrace. It's right across from -- about a block from
18 the Oak Brook Shopping Center, and they took me to the
19 Advocate Good Samaritan Emergency Room. Thought they'd
20 just pump my stomach and tell me to go home.
21 Q. And what happened after that?
22 A. I just arrived in the emergency room, I told
23 them what happened, and they gave me some kind of

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24 medication, pumped my stomach.

1 Q. And then you were transferred to the Critical
2 Care Unit in the medical floor?
3 A. Yeah, I mean, I don't remember much of that.
4 I've been told that and I saw it in one of the medical
5 records, but I have almost no recollection of that.
6 Q. What is the next thing that you remember?
7 A. Being transferred -- oh, I'm sorry. After
8 that or -- okay. I mean, they asked me some questions
9 in the emergency room, but after that, that I remember,
10 when -- after that they -- I was -- I was -- I was
11 wheeled to the psych unit.
12 Q. You remember being taken to the psych unit,
13 the Behavioral Health Unit?
14 A. Yeah, I remember being put on a gurney and
15 going there.
16 Q. And why were you willing to go to the
17 Behavioral Health Unit?
18 A. I had no choice.
19 Q. Were you telling the health care providers --
20 were you honest with them in giving them information
21 about how you were feeling and that you were feeling
22 hopeless and helpless and worthless and still thinking
23 about suicide? Were you truthful?
24 A. Yeah. I mean, mostly, you know, yeah.

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1 Originally I was, yeah, I believe so. I mean, yeah.
2 Yes.
3 Q. Okay.
4 A. I mean, I was an open book. I'm sorry.
5 Q. How did you feel about being in the psych ward
6 or the Behavioral Health Unit? Which do you like to
7 call it?
8 A. You don't want to know what I like to call it.
9 Let's call it psych ward.
10 I'd never knew -- I never knew about it. I
11 got an education the hard way. It was -- When I got on
12 there, it was -- It's much different. It's not like a
13 hospital. People -- You wear your regular clothes. The
14 nurses don't wear scrubs. But it's very -- You're in a
15 locked place. It's all locked. Everything is locked.
16 Everything is -- it's just different.
17 It's -- there's no -- I mean, I know a little
18 bit about it now, but there's no -- Like, the light
19 switches, either you can't turn them on or they're
20 soldered to the wall. There's no lights. They're all
21 recessed. There's no place where you can really hurt
22 yourself.
23 And they're very barren. There's, like, the
24 room might have two beds in it, and they're not really

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1 hospital beds. They're not comfortable when you sleep
2 in them. There might be -- And I remember Advocate
3 would have shelves -- but just like where you can put
4 your clothes -- against one wall.
5 And there was a bathroom in there but, like,
6 the plumbing, it's just different because, like, they
7 don't want you anyplace where you can, like, hang
8 yourself. So all the plumbing is against -- there's no,
9 like, grab bars. I could go on about that. I'm sorry.
10 Q. Let me interrupt you. Let me ask you the
11 question again. How did you feel about being in the
12 psychiatric ward?
13 A. I wasn't happy about that at all. I wanted to
14 go back -- I wanted to leave.
15 Q. Now, on that very first day that you were
16 there, they searched you, right?
17 A. In the emergency room?
18 Q. No, I'm sorry. Once you went to the
19 psychiatric ward.
20 A. I was searched in the emergency room and then
21 I was searched again. I mean, they told me -- I don't
22 know. I was in a gown, and I guess later they found out
23 that they searched me. I didn't know what they did, you
24 know. I mean, I don't know.

1 Q. Do you remember --
2 A. They handed me my clothes.
3 Q. Do you remember that on the first day that you

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4 were in the psychiatric ward you realized that you had a
5 knife in your pocket and you turned it over --
6 A. Oh, yeah.
7 Q. -- to the Good Samaritan people?
8 A. That's correct.
9 Q. Okay. Why did you do that?
10 A. I told the guy I thought I could hurt myself
11 with it.
12 Q. When you gave him the knife, you said, "I
13 think I could hurt myself with this?"
14 A. I don't remember the exact words I used.
15 Something along "I could harm myself with it." I know I
16 shouldn't have -- They take away everything. They take
17 away dental floss, your makeup. Everything is gone.
18 Shoelaces, belts, and here I am with a knife. Here. I
19 don't want to --
20 Q. And you turned it in?
21 A. Yes.
22 Q. On Sunday of that weekend you took your knife
23 back?
24 A. I don't want to get caught up in semantics,

1 but yeah, I took it back.
2 Q. And what did you do with it when you took it
3 back?
4 A. Put it in my pocket.
5 Q. Where did you take it?
6 A. Into my room.

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7 Q. Why did you take it back?

8 A. I thought about that question for -- I've had
9 some time, quite a bit of time. I was in the hospital.
10 I had a lot of stigmas about the mentally ill. I
11 thought they were dangerous, violent and all. And, you
12 know, there's people -- it was like for self-protection.
13 I never used a knife against anybody. I felt safe with
14 it, but the main reason -- I mean, I always kept the
15 option of killing myself, too. So, you know, maybe the
16 first reason was secondary. The first (sic) reason was
17 probably primary.

18 Q. You don't deny that when you took that knife
19 back that you were still thinking about suicide and
20 still wanting to keep that option available for
21 yourself?

22 A. Oh, yes, clearly. No, no. All the time up to
23 there I was very suicidal.

24 Q. One of the things that I try and do is I try

1 and ask the questions that I think the jurors might be
2 asking themselves. And my question to you is about that
3 night on August 6th, 2007, when you started cutting
4 yourself, why didn't you stop?

5 A. I don't know. I don't want to get too
6 gruesome, but it -- commonly -- What I thought the way
7 to kill yourself was cutting your wrist. That's not --
8 I won't tell you the right way. I learned the right way
9 to do it, but it stopped bleeding. So it just became

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10 my -- my goal now was -- I wanted to stop the dizziness.

11 I just -- I just wanted -- I just wanted more blood to

12 come out.

13 Q. When you cut yourself the first time, you

14 could see that you were bleeding, right?

15 A. Oh, yeah, started bleeding through.

16 Q. And it hurt?

17 A. Not as bad as you think it would at first.

18 After a while it didn't -- I didn't feel almost any

19 pain.

20 Q. And you continued to cut?

21 A. Yeah.

22 Q. Tell the jury all the places where you cut

23 yourself.

24 A. I couldn't get blood out of my -- my arms, and

1 I thought to stab myself in the neck. Nothing came out.

2 Or a little would come out. Then I tried my leg. I

3 knew there was an artery in my leg.

4 It was just like I was obsessed with cutting

5 myself. I was never into that. That's a separate thing

6 about, you know, self-harm, but I just wanted to -- I

7 was almost -- it was almost like a -- it was almost like

8 a peaceful moment. I knew my vertigo would finally

9 stop. It was -- that was my out. I mean, it sounds --

10 it's obviously irrational, but that is what was going

11 through my head.

12 Q. Did you cut yourself once? Twice? Five

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13 times?

14 A. Oh, no. Probably 150, 200 times.

15 Q. Was it over the course of seconds?

16 A. No, no.

17 Q. Minutes?

18 A. No. I could tell you almost exactly to the

19 minute. It was over two hours.

20 Q. When did you stop?

21 A. I started -- I had a watch with me. I had

22 a -- I'm a diver. So they let you keep your watch

23 because it was rubber. I can't remember if there was a

24 clock in the room. Somehow I remember that but I don't

1 know why.

2 But I had a diving watch. It was a cheap

3 Timex, but it was very good. It had a button with an

4 LED light so you could light it up. So I remember

5 checking the time. And the reason I know it ended is

6 because I got literally physically exhausted. I got a

7 little bit dizzy, nothing was happening, there is blood

8 all over the place, what's going on here? And I looked

9 at my watch again. It was 5:30. And I just -- I just

10 laid my head down, and either I passed out or I fell

11 asleep. I don't remember anything else after that till

12 I woke up in the morning.

13 Q. During those two hours from 3:30 to 5:30, you

14 were supposed to be watched by the Good Samaritan staff

15 and checked on for safety every 15 minutes; is that

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16 right?

17 A. I didn't know it at the time. I had no idea

18 what -- about checking or anything. You know, I learned

19 afterwards they were supposed to. I didn't -- I mean, I

20 remember they'd come in once in a while the night

21 before. It was my second night I was on the psych unit,

22 but I didn't know. Nobody told me they were going to

23 check you, like, every 15 minutes or so.

24 Q. Is it fair to say, though, from 3:30 when you

1 first started cutting yourself to 5:30, even when you

2 got out of bed and went into the bathroom, that no one

3 came in on --

4 A. No. Nobody came in since about at least 1:30.

5 No, no.

6 Q. And it was about 7:40 the next morning before

7 Nicole Scalzetti, the nurse, came in and found you?

8 A. Yeah. I woke up. She had started screaming.

9 I mean, I know her name now. It was a woman. I never

10 heard a guy scream like that, but she came in -- And I

11 don't want to get too gross, but it looked like Jack the

12 Ripper met Charles Manson there. It was, you know.

13 Q. Do you remember what the room looked like when

14 Nicole came in and screamed? Were you able to see --

15 awake enough to see what it looked like?

16 A. Prior to going to sleep I know what it was

17 like, not when she really woke me up, but prior to

18 going -- I tried to cut through -- my bed was saturated

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19 with blood. I tried to cover it up with the blankets.
20 I couldn't even do that. There was -- there were pools
21 of blood on the floor. And I couldn't figure out why
22 I'm not -- I almost -- why am I not even feeling
23 anything. That is what the weird part was. I mean, it
24 seemed like a -- I could see my bones in my wrist and

1 there's blood all over the place and I'm walking around.
2 Q. At any point in time during those hours, did
3 you have the ability to, the control to stop yourself
4 from hurting yourself?
5 A. I didn't want to, no. I mean, I don't how to
6 answer -- does that answer your question.
7 Q. I think it does.
8 A. I mean, no. I wanted to.
9 Q. You know I care about you. I don't want to
10 embarrass you, but I do want you to step down here with
11 me and show the scars to the jury.
12 A. It's okay. It's not really gross. Don't
13 worry. A lot of it has healed.
14 MS. KAVENY: Your Honor, may he step down?
15 THE COURT: Yes.
16 THE WITNESS: Can I take my jacket off? I'll just
17 show you one arm. (Indicating.)
18 Again, I had wrist surgery on both wrists, so
19 you're just going to see scars. Probably seen them. I
20 just got a lot of them. These are the cut marks up and
21 down the arms. I had to have wrist surgery on both

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22 wrists, but those, you know --

23 BY MS. KAVENY:

24 Q. Part of our case is about disability. And I'm

1 not trying to embarrass you, but I do want you to roll

2 your sleeves up, and I do want you to show all the

3 jurors and make sure that they see it.

4 A. (Indicating.) I mean -- you can see it.

5 They're just scars.

6 Q. Walk down to the other end, if you will.

7 A. (Indicating.)

8 Q. Is your other arm the same?

9 A. Yeah. Actually, this arm is worse because I'm

10 right-handed. You tend to do more damage with the right

11 hand than you do the left hand.

12 Q. Show your other arm, please.

13 A. I mean, the -- I don't know what it looks like

14 now. I don't look at it. But I did a lot more damage

15 to this arm (indicating) and the fingers. Like they

16 were almost frozen for a long time. I cut all the

17 ligaments and these and this. This is really -- I'm

18 sorry. It's embarrassing.

19 They had -- they did wrist surgery, which took

20 about a while to -- I mean, skin graft surgeries, take

21 part of your -- they had to close the wounds. The

22 wounds took about a year to heal.

23 Q. Where did they take the skin to graft from?

24 Your thighs?

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1 A. Yeah, it was from my thigh.
2 Q. Thank you.
3 Now, one other question. I think a lot of
4 your deepest wounds were to your neck area?
5 A. Yeah. You can't see anything there. That's
6 healed.
7 I couldn't swallow for several months. They
8 thought it was going to be permanent. I mean, I could
9 swallow but not like hard -- steaks or something. I
10 had what they call a chin cup move, which is -- you have
11 to like this (indicating) and something -- you choke and
12 you gag on your food.
13 Q. You were intubated and on a respirator for a
14 while?
15 A. When? I mean, I've learned since, yeah. I
16 don't remember anything after -- I remember something in
17 the morning. I mean, when I was woken up, they were
18 working on me and -- in the psych unit, and they
19 literally -- it was like a fire drill. They should have
20 called 911. They could have got me there faster, but
21 they literally took the bed and had to roll me -- it's
22 in a separate building. They're rolling the bed through
23 the hallways, and the last thing I remember is going in
24 to -- I don't know -- the emergency room, emergency

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1 department. That's the last thing I have actual memory
2 of.
3 Q. And just so we're clear, do you have -- does
4 your neck look differently anywhere, or are there any
5 scars on it?
6 A. No, I don't think so.
7 Q. Okay. When you look at yourself and when you
8 look at your scars, and I think you said you try not to
9 do it, but when you do see scars on your body, where do
10 you see them? On your legs? On your back? Mostly your
11 arms?
12 A. Yeah, I don't really -- I don't know.
13 Q. You try not to look?
14 A. Yeah, I kind of put it out of my mind.
15 Q. Thank you. If we could bring up the --
16 A. Can I take a minute? Just a minute.
17 THE COURT: Sure. Take a recess.
18 All rise for the jury.
19 (Recess was taken.)
20 THE COURT: You may be seated.
21 MS. KAVENY: If I could have one minute, your
22 Honor, I apologize.
23 THE COURT: Sure, yes.
24

1 BY MS. KAVENY:
2 Q. Are you ready to continue?

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3 A. If I must, yes.

4 Q. I'm sorry.

5 A. Okay.

6 Q. How long -- I'm going to put up a graphic and
7 talk about where you were after 2007, the different
8 places, okay?

9 A. (No audible response.)

10 Q. If we could bring that up. It's Plaintiff's
11 Exhibit 352. We have a little problem there. There we
12 go.

13 Okay. And [redacted] I want to just go through and
14 have you tell us a little bit about what you remember
15 about being at these different places. I don't want you
16 to worry about the admit date or the discharge date.
17 We're just going to talk about the places, okay? All
18 right?

19 A. (No audible response.)

20 Q. So Advocate Good Samaritan Hospital, that's
21 what we've talked about. After August of 2007 and the
22 cutting episode, where did you stay at the hospital?

23 A. Oh, they put -- they have a special unit.
24 It's called 3 North. It's a locked -- I don't know.

1 It's a locked unit within the locked unit. It's for
2 very -- I spent -- I must have set some kind of record
3 there, but I spent 30 days there. There were somewhere
4 between four and five people in that unit.

5 Q. What do you remember about being in that unit?

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6 A. I was a little foggy at the time, confused,
7 but it -- It's a regular psych unit is there. That
8 place is completely bare. The furniture is bolted to
9 the floor. I had one small room. There was just a bed
10 in there and like a hospital tray. That was it. That
11 was the room. There was a window. The windows are
12 all -- you can't break out of the windows. There's no
13 artwork up there, anything you could possibly hurt
14 yourself on.
15 The -- What I remember most about it was the
16 other patients. You couldn't really talk to anyone.
17 They were very -- I was put in with the people who were
18 there -- They rotate you. I mean, usually -- I was
19 there for 30 days. So most people would stay there two
20 or three days from what I remember. Very severely
21 psychotic people. I mean, one guy was defecating on
22 himself. You know, like you see on the street, somebody
23 is talking to God or whatever.
24 You know, you were watched. They would put

1 you on -- you have a camera in your room. They put me
2 on what they call -- now I know what it's called -- one
3 to one. You're just watched 24/7. You have absolutely
4 no privacy. I mean, you have somebody staring at you
5 within hand's reach. Why they did it for 30 days I'll
6 never understand, but they watch you take a shower, they
7 watch you go to the bathroom. You have -- they have to
8 stay within, you know, arm's reach of you.

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9 Q. You know, one thing I didn't ask you when we
10 started talking about your background and before you
11 became sick in 2007, where were you living?
12 A. I was living out in Oakbrook Terrace.
13 Q. A house? In a condominium? Tell us about it.
14 A. No, it was actually pretty nice. It was --
15 One of my client's owned a lot of property out there,
16 and he was going to make -- At one time he was going to
17 have a huge development out there. And I knew the
18 people there from working there, and they had an extra
19 unit, and it was like the original model building that
20 was going to be the model for these -- He was going to
21 make this huge development out there. So it was
22 supposed to be a temporary thing because I thought I was
23 getting married, and it wasn't a bad place to live.
24 Q. How many bedrooms? How many bathrooms?

1 A. It was only a one bedroom place, but it was
2 nice, you know. It was -- you know.
3 Q. And new development?
4 A. It was modern.
5 Q. All right. So after you were at Advocate Good
6 Samaritan Hospital, you were transferred to Alexian
7 Brothers?
8 A. That's correct, yes.
9 Q. And tell us about Alexian Brothers.
10 A. I think I spent about two-and-a-half or
11 three weeks there. It's, again, you're in a place

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12 that's very similar to Advocate. I don't know. You get
13 up in the morning. They tell you what are your goals
14 for the day, and you'd fill out a sheet what's your
15 goals for the day. And they're big on art therapy, and
16 I can't draw, you know. So they'd have an art therapist
17 come in, and then they'd tell you -- big on how to deal
18 with -- coping with stress. I got more -- told me I
19 didn't know how to cope and stress. I mean, I couldn't
20 handle stress, and I couldn't handle cope. I mean
21 cope -- stress, that's what I did for a living.
22 It's very structured. Everything's when you
23 eat, when you go to sleep. I mean, when you're supposed
24 to go to sleep or be in your room; when you get up in

1 the morning, eat, everything.
2 Q. Of all of the places that you lived from
3 August of 2007 through 2013, what was the worst
4 experience for you?
5 A. Abbott House.
6 Q. Why?
7 A. Well, that's -- that was where I thought I'd
8 spend the rest of my life. I was -- Abbott House is a
9 nursing home, psychiatric nursing home, but it's a
10 nursing home, and it -- it actually started at Advocate.
11 That was my discharge plan. I don't know what to tell
12 you.
13 So here I am -- I mean, I had a brain injury I
14 didn't know I had, but I was confused. They were

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15 sending me to this nursing home. I felt they treated
16 you like beyond a kid. You can't believe it. And I
17 have a little -- I'm not used to being told what to do,
18 and there were like 140 people in that place. They had
19 two showers, but when you're in a -- you can't take,
20 like, a warm shower because they don't want you --
21 certain people hurt themselves, so you never got really
22 a warm shower. They control the temperature. The
23 little things that drive you batty. So you could never
24 get, like, a hot shower. And --

1 Q. [redacted] did it hurt your pride --
2 A. Oh, yeah.
3 Q. -- to live in Abbott House?
4 A. If there was ever a bottom, yeah. I couldn't
5 go out. They wouldn't let me -- part of the condition
6 of going there because I had a history of suicide was
7 for the first 30 days there I couldn't leave the place.
8 You couldn't walk out. I mean, you have to sign out,
9 they want to know where you're going, but you could
10 leave. And the people in there, there are a lot of some
11 seriously -- I mean, you had some people that had some
12 serious issues. So I'm sorry. Go ahead. What?
13 Q. No, my question was did it hurt your pride --
14 A. Oh, yes.
15 Q. -- to be living in a nursing home?
16 A. Yes. I didn't -- you know, I was glued to my
17 Blackberry. I didn't have any phone. There was no

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18 phone in the place. You know, yeah, I mean, I was
19 off -- I'm not -- I don't want to sit here -- it was
20 terrible.
21 Q. Let's skip to talking about Elgin. You were
22 there for almost a year. Is there anything you want to
23 say about Elgin?
24 A. Elgin -- there were some really good people

1 there. Ideally, you don't want to go there. It's a
2 locked place. There's a small courtyard with barbed
3 wire around it. I was terrified when I was going there.
4 I had heard horror stories about it.
5 It's the same environment. There's no -- you
6 know, a room, two beds in there. There's a very high
7 turnover. It's a hospital. Elgin is a hospital. How I
8 wound up being there for over nine months I'll never
9 understand.
10 But the people there, some of them, are
11 just -- I don't know. Some were just very dedicated
12 people. I became friends with -- I shouldn't say
13 friends. I came -- Over the time there was a couple of
14 staff, Shirley and Carol, they were two workers there,
15 tough as nails, and -- but they eventually warmed up to
16 me. I mean, when you first got there if you said -- you
17 looked at them sideways, you know. Carol was -- I
18 mean -- They were very nice people.
19 Q. Let me interrupt you there. When you left
20 Elgin, you went to live at the Lawrence House?

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21 A. Yes.
22 Q. Okay. We heard from your brother, Steven
23 ████ yesterday, and from your brother's testimony,
24 he was instrumental in helping you find places where you

1 could kind of move up the ladder from the -- Good
2 Samaritan Hospital eventually to Lawrence House; is that
3 fair?
4 A. Oh, yeah. My brother's always been -- my
5 brother's the best. I mean, he was always -- He was
6 always there for me.
7 Q. You trusted him and agreed with him --
8 A. Oh, yeah.
9 Q. -- in finding out the best places for you?
10 A. He's my brother. I can talk about him, but
11 you can. No, he's -- he's really a great doctor, too.
12 Q. Lawrence House, you were there for a long
13 time, five years. What was the best part about Lawrence
14 House, and what was the worst part about Lawrence House?
15 A. When I first got there, it wasn't really bad.
16 It was -- they just recently closed it, thank God. It
17 was -- I had a one bedroom there. When I first got
18 there, I didn't go out a lot, almost never. It was
19 designed -- when you say the worst part and the best
20 part?
21 Q. Right. What was the best part about living at
22 Lawrence House and what was the worst part about living
23 at Lawrence House?

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24 A. The best part was when I first got there.

1 They had a guy who owned a restaurant down there, and he
2 would serve really good food. The food that I ate at --
3 it was like - call it prison food, it's terrible. I
4 was this for a year, so finally I got a decent meal.
5 Q. At Elgin -- You mean the food at Elgin was
6 bad?
7 A. Yeah. You wouldn't believe what passes for
8 food.
9 Q. Now, the food at Lawrence House was good. It
10 was nice to have a good meal?
11 A. Oh, yeah, and the guy was really good. The
12 guy, I befriended him. It was -- it was designed --
13 there were a lot of conveniences there for me. In other
14 words, they had maid service there that would come and
15 change your sheets. I had a one bedroom -- I mean a
16 single bed. I was able to get a computer. You had a
17 phone. Just start thinking stuff you take for granted.
18 Everything's gone and then you get back these things,
19 it's like wow.
20 Q. So it felt like a real step up from -- from
21 Elgin?
22 A. Well, better than being in a locked place. I
23 mean, I could go outside.
24 Q. What was the worst part?

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1 A. Oh, God. You won't believe half the stories
2 I'd tell you. The place was infested with bedbugs. I
3 don't know if you've ever dealt with bedbugs. Three
4 times I had to have my place -- everything was thrown
5 out. Just -- and I mean bedbugs.
6 The -- after about three years they closed
7 down the restaurant. I was able to get some Meals on
8 Wheels and that helped a lot.
9 A lot of good people in this world, I'll tell
10 you. I didn't know that, but there's like -- I'm
11 Jewish, but they had -- Catholic Charities ran it, and
12 they assigned me to a Jewish organization, and they
13 would -- Catholic Charities would come out once a
14 year -- I'm sorry, not once a year, more than that. And
15 they would say what do you need? And I would say
16 delivery of hot meals. And also Lawrence House had a
17 pharmacy there, it had a doctor's office there, had a
18 small, like, convenience store next door.
19 And I'm sorry, where were we?
20 Q. We were talking about what the worst part of
21 living at Lawrence House was.
22 A. I was talking about the good parts.
23 After a while -- it got taken over by this guy
24 was a slumlord, and they had a lot of what they call

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1 SROs. There's a huge need for that in the city, single
2 residents -- I forget what the zero stands for, but
3 they're small places, but they take an apartment and cut
4 them up, but they're cheap. So they're 5 to $600 a
5 month. For people living on limited income, it's
6 heaven. And there's a big need in the city for that.
7 There were also a lot of nursing homes are -- they have
8 a lot of psychiatric patients. What's the worst part?
9 Q. Let me stop you.
10 A. I'm sorry. I'm getting off track.
11 Q. That's all right.
12 A. There were fires in there. There were a lot
13 of drugs in there. There were prostitutes in there.
14 Q. Let me stop you there.
15 A. I'm sorry.
16 Q. You're doing great. I'm going to ask you
17 about Dr. Roth. Do you remember who Dr. Roth is?
18 A. Yes.
19 Q. Who is Dr. Roth?
20 A. He's the -- call him a physiatrist at RIC,
21 which is the Rehabilitation Institute of Chicago.
22 Q. And how is it that you first came to see
23 Dr. Roth?
24 A. It was - my brother -- my brother

1 suspected -- we were asking -- he was asking me
2 questions about this -- he was looking at my medical
3 records, and there was something about a possible brain

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4 injury.

5 MR. ATWOOD: Objection.

6 THE COURT: Sustained.

7 BY MS. KAVENY:

8 Q. Without telling us what was contained in your

9 medical records --

10 A. I couldn't read them.

11 Q. That's in evidence and we'll be able to show

12 that to the jury.

13 Without talking about what was in your medical

14 records, what was it -- why did your brother want you to

15 go and see Dr. Roth?

16 A. I'm very lucky. This whole thing I'm lucky.

17 He happened to be -- one of his patients was -- he was

18 treating the father-in-law or mother-in-law of Dr. Roth.

19 My brother is a cancer doctor, you know. My brother was

20 asking around about some questions, because I wasn't --

21 I'm not depressed. I haven't been depressed since

22 leaving Elgin. And I kept on telling everybody that,

23 they said -- they thought I was -- you know, had all

24 these mental issues. And -- but I was having trouble

1 with my attention, and I kept on telling everybody I'm

2 not depressed, but I wasn't getting better. So my

3 brother asked some questions around like what's going on

4 upstairs.

5 MR. ATWOOD: Objection, your Honor.

6 THE COURT: Sustained.

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7 Pose another question.

8 BY MS. KAVENY:

9 Q. After your brother had conversations with

10 colleagues and including Dr. Roth, did you go to see

11 Dr. Roth?

12 A. Yeah.

13 Q. What is Dr. Roth's specialty, as you

14 understand it?

15 A. He's a rehabilitation specialist.

16 Q. Okay. And he works at the RIC with

17 individuals who have suffered brain injuries?

18 A. Yes.

19 Q. And did Dr. Roth see you, interview you,

20 diagnose you, and recommend you for a brain injury

21 cognitive rehabilitative program at RIC?

22 A. Oh, yes, yes.

23 Q. Okay. When did you start that brain injury

24 program at RIC?

1 A. I started the -- I think it was around April

2 of -- I don't know exactly. Right around April of 2013.

3 Q. And how long did you continue to go to the

4 brain injury brain rehabilitation program there?

5 A. I mean, I counted the sessions. I was asked

6 that. There were 17 sessions. They typically last an

7 hour. It's what they call -- yeah, I went to the

8 sessions.

9 Q. Over the course of months?

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10 MR. ATWOOD: Objection.

11 THE COURT: I sorry?

12 MR. ATWOOD: Can I be heard real quick on that,

13 your Honor?

14 THE COURT: Sure. We'll take a sidebar.

15 (WHEREUPON, a sidebar was had outside

16 the presence of the jury.)

17 THE COURT: We're at a sidebar outside the presence

18 of the jury. Could you circle in here a little bit?

19 Your objection?

20 MR. ATWOOD: Your Honor, my objection was that we

21 took Dr. Roth's deposition I think a year ago, and we

22 had certain records, but I'm not sure that -- I'm pretty

23 sure that we didn't have records of treatment through

24 December of 2013, and before he started getting into

1 talking about 17 weeks or treatments or whatever it was,

2 my objection was that wasn't disclosed to me.

3 THE COURT: Response?

4 MS. KAVENY: I think Dr. Roth's deposition was

5 taken after that, and so he would have had the

6 information, would have testified about that program

7 that Mr. ████ went through. We can check the date of

8 Dr. Roth's deposition and then we would know exactly if

9 it was in 2014, though. So there would have been

10 information regarding all of his care -- it was all in

11 2013.

12 MR. ATWOOD: Right. My suggestion is we could --

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13 if we can take a break for lunch since it's five minutes
14 out. We can confirm with each other what dates we're
15 talking about and then perhaps we can --
16 THE COURT: How much more do you have?
17 MS. KAVENY: I only have a couple minutes more.
18 Even if we can just work out an accomodation to --
19 THE COURT: You know, you're going to have cross?
20 MR. ATWOOD: Oh, yeah.
21 THE COURT: Okay. Then perhaps on redirect you'll
22 have no objection to scope if you guys work something
23 out at lunch?
24 MR. ATWOOD: Yeah, that's fine.

1 THE COURT: You can. Let's do that.
2 (WHEREUPON, the following
3 proceedings were had in open court
4 in the presence of the jury.)
5 THE COURT: Pose another question, Counsel.
6 MS. KAVENY: Thank you.
7 BY MS. KAVENY:
8 Q. So, Mr. [redacted] I think -- [redacted] I think you
9 said that it was approximately 17 sessions that you went
10 to RIC for therapy over a period of time?
11 A. I think one was an evaluation.
12 Q. Is that right?
13 A. May have been 17, 18. I don't remember.
14 Q. Did you find that therapy helped you?
15 A. Oh, yeah.

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16 Q. And give us some examples of what they were
17 teaching you and how it was helping you?
18 A. It's -- they call it CRT, or cognitive
19 rehabilitation therapy, as opposed to like -- there was
20 always confusion because cognitive behavioral therapy is
21 very similar, which is like, you know, couch therapy,
22 talking to a psychiatrist. They're mostly -- they say
23 they're speech therapists, but they're not really -- I
24 mean they are, but they're trained in brain injuries.

1 Q. Let me focus you in a little more. Give us an
2 example of what they would do with you during a session?
3 A. Well, they'd work on a particular problem. I
4 didn't know I had these problems. Okay. So I --
5 because of my brain injury, I would --
6 MR. ATWOOD: Objection.
7 THE WITNESS: -- I was repeating myself. They call
8 it perseveration.
9 THE COURT: Sustained.
10 Pose another question.
11 BY MS. KAVENY:
12 Q. So give us an example of an exercise or
13 treatment that they would give you in one of your
14 sessions?
15 A. All right. They'd say -- they had -- They put
16 up a story on the computer, and then I'd have to repeat
17 the story and summarize it and condense it so I wouldn't
18 get distracted.

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19 Q. Okay. So they were helping you overcome
20 distraction and trying to stay on point?
21 A. Yes.
22 Q. Okay. Were they also helping you to be less
23 tangential and go off on points in your conversation?
24 A. Yes.

1 Q. Were they teaching you how to keep lists of
2 things and document things so that you could keep track
3 of what you were talking about and what the
4 conversations were?
5 A. Yeah, they teach things that you take for
6 granted, but you can -- a lot of things I wasn't aware
7 of. They teach -- they call it "you talk, I talk." I
8 was interrupting people. I wasn't aware of that. So
9 they would make sure that I -- if I interrupted the
10 person, that they would tell me, and they'd teach -- I
11 wasn't aware I was doing it. So they would tell me what
12 I was doing, and at first it was really embarrassing,
13 but I worked very hard and tried to do it as best I
14 could. Something you don't think about, and I wasn't
15 even aware of it, and they're just great people there.
16 Q. ███ have you worked very hard to try to get
17 back to --
18 A. Oh, yeah.
19 Q. -- the way you were before August of 2007?
20 A. Yeah. Took it very seriously. You talking
21 about at RIC?

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22 Q. In general.

23 A. Yeah. Yes. Oh, yeah. I did as much as I

24 could, yeah.

1 Q. What medications are you currently on?

2 A. I have slightly high blood pressure. Do you

3 want to know the exact medications?

4 Q. You could just tell us what they're for.

5 A. Slightly high blood pressure, which is

6 controlled. I have -- I take an antianxiety pill.

7 Q. That's Klonopin?

8 A. Yes, yeah, Klonopin. The generic is

9 Clonazepam. And I take Adderall for my -- I have

10 serious Attention Deficit Disorder.

11 Q. So Adderall is a medication that they gave you

12 to help you try to focus and keep attention?

13 A. Yeah, it's not a smart pill. It's -- it helps

14 you -- my attention span has increased materially since

15 I've been on the drug and from RIC.

16 Q. Are you on any type of an antidepressant

17 medication?

18 A. No.

19 Q. When was the last time you were on

20 antidepressant medication?

21 A. I was at Elgin.

22 Q. I'm going to show what you we've marked as

23 Plaintiff's -- I think I put a copy of it in front of

24 you -- Plaintiff's Exhibit 17.8. Do you recognize those

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1 to be your tax returns from 2002 until 2007 when you
2 stopped working in August?
3 A. Yeah. I looked at them before when they were
4 out. What's -- what year? 2002 to 2007?
5 Q. Is that right?
6 A. Yeah. Yeah.
7 MR. ATWOOD: Counsel, what years?
8 MS. KAVENY: 2002 through 2007.
9 MR. ATWOOD: Your Honor, we're objecting to the
10 2007 returns for reasons we discussed before.
11 THE COURT: Sustained.
12 THE WITNESS: They're all there.
13 MS. KAVENY: Sustained?
14 THE WITNESS: I saw them.
15 MS. KAVENY: Your Honor, I'm going to need a
16 sidebar.
17 THE COURT: Just pose a question regarding 2002 to
18 2006.
19 BY MS. KAVENY:
20 Q. Were you earning income from 2002 to 2006
21 that's reflected in your tax returns?
22 A. Yes.
23 Q. Were you earning income in 2007 that is
24 reflected in your 2007 tax return before August of 2007?

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1 MR. ATWOOD: Objection.
2 THE COURT: Overruled.
3 THE WITNESS: Yeah. I was having a good year.
4 MS. KAVENY: And, your Honor, at this point we
5 would introduce the tax returns from 2002 through 2007
6 into evidence.
7 THE COURT: Any objection?
8 MR. ATWOOD: Only to 2007, your Honor.
9 THE COURT: Subject to cross examination and
10 further discussion on the subject they'll be admitted,
11 2002 to 2006. You can renew your motion to 2007.
12 MS. KAVENY: I'm at a loss. I'm going to need a
13 sidebar.
14 THE COURT: We'll have a sidebar, then.
15 (WHEREUPON, a sidebar was had
16 outside the presence of the jury.)
17 THE COURT: Okay. Move forward. Your objection.
18 Want to argue?
19 MR. ATWOOD: Tim's going to argue the objection
20 because he's the one -- I'm going to do the cross of the
21 witness.
22 MR. HOGAN: We would just object to the relevance
23 of the 2007 tax returns. They were not relied on by any
24 expert. He's already testified that he was earning

1 money, and the specific amounts of money he was earning
2 are irrelevant to any damages in this case.

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3 THE COURT: Response?
4 MS. KAVENY: I think the discussion yesterday was I
5 was not allowed to introduce the tax returns through the
6 economist because he didn't rely on them, but that I was
7 going to have to do it today with my client. They're --
8 they have made substantial arguments that he was
9 completely incapacitated and not working in 2007 and was
10 on a downward spiral. I don't see how I cannot put in a
11 tax return to show what his -- I don't even need an
12 economist.
13 I should be able to put in a tax return
14 through my client. I think it's a document that comes
15 in simply through judicial notice. He's laid the
16 foundation for it and that he was working and earning
17 income in 2007, and it's -- it's circumstantial
18 evidence -- even if I didn't have an economist, it's
19 circumstantial evidence that the jury could use to make
20 determinations about what his income would have been in
21 the future even if I didn't have an expert on that.
22 THE COURT: Reply?
23 MR. HOGAN: The objection of relevance is that
24 he -- the 2007 tax return does not necessarily reflect

1 anything that he did in 2007. The way a lawyer can be
2 paid -- they can be paid payment for work done in 2006.
3 He already testified he worked in 2007, and there's no
4 probative value for the 2007 specific number tax returns
5 because they don't -- no one's testified that they

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6 reflect work done in 2007.

7 THE COURT: Did you have a request in Answers to

8 Interrogatories or any documents as to the source of the

9 funds that are reflected in those returns, for what

10 services are -- I presume it's all for services as a

11 lawyer?

12 MR. HOGAN: Correct.

13 THE COURT: Right. Did you ever request more

14 specificity or anything like that in the case? They

15 just didn't claim privilege or anything like that with

16 respect to what work is reflected in those return

17 dollars?

18 MR. ATWOOD: The only -- the answer to that

19 question directly, your Honor, I asked only the -- I

20 believe the economist if -- how lawyers are paid, are

21 they paid for work done in the past and is it paid into

22 the future, and -- I think that's a fair

23 characterization of how we work.

24 THE COURT: You expect he'll be able to answer the

1 questions about the source of those return dollars?

2 MS. KAVENY: On cross-examination, yes.

3 THE COURT: Well, you'll lay a foundation on direct

4 examination with him?

5 MS. KAVENY: Yes.

6 THE COURT: I'll overrule the objection.

7 (WHEREUPON, the following proceedings

8 were had in open court in the presence

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9 of the jury.)

10 THE COURT: With respect to 2002 to 2006, they'll

11 be admitted. Lay a foundation for 2007.

12 Counsel, you can pose another question.

13 BY MS. KAVENY:

14 Q. Mr. [redacted] I'm going to show you what I've

15 marked as Exhibit 293, which is just a blown-up copy of

16 your 2007 tax returns so it's a little bit easier to

17 read. Let me ask you a couple foundational questions on

18 that.

19 Is this your tax return that was filed for

20 income you earned in 2007?

21 A. I mean -- I mean, I could tell by looking at

22 the first couple pages, yes.

23 Q. Okay. And if we turn to Page 3 of the tax

24 return, can you tell me this first number that I've

1 highlighted there on Line 7, what is -- what is the

2 significance -- without the number yet what is the

3 significance of that line item? What does that show?

4 A. That's your total -- total receipts during

5 2007 that I earned from my business.

6 Q. So that is income that you earned gross

7 receipts for work that you did in 2007?

8 A. Yes.

9 Q. And what's the number?

10 A. 116,580.

11 Q. And then we have a number down here down at

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12 the bottom that I've also highlighted. What is the
13 significance of that number?
14 A. That would be my -- the amount of money I
15 earned after expenses. So it's -- do you want me to
16 read the number?
17 Q. Yes, please.
18 A. 86,949.
19 Q. So am I correct that the number of $116,580
20 would have been income that you earned in 2007 from
21 January prior to August of 2007?
22 MR. ATWOOD: Objection.
23 THE COURT: Overruled.
24 THE WITNESS: There may have been some additional

1 income that I got -- that came in afterwards but --
2 BY MS. KAVENY:
3 Q. After August 6th maybe a client paid a bill?
4 A. Yeah, right. But most of it was before that.
5 Q. It would reflect the work that you did in
6 2007?
7 A. Oh, yes. I mean, there may have been some --
8 I usually got paid promptly with retainers. So, you
9 know, there may have been something that I did in
10 November, December that was reflected but that would be
11 typical.
12 MS. KAVENY: Your Honor, with that we would move
13 Plaintiff's Exhibit 293 into evidence, the 2007 tax
14 return.

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15 THE COURT: Objection?
16 MR. ATWOOD: No objection, your Honor.
17 THE COURT: Without objection it will be admitted.
18 It will be admitted, I should say.
19 MS. KAVENY: Thank you.
20 BY MS. KAVENY:
21 Q. I'm also going to show you what we've marked
22 as -- special summary exhibit number?
23 A. Can I take literally like just a --
24 Q. You need a short break?

1 A. I just want to regroup. I don't -- it will
2 take me just a minute.
3 Q. Okay. I just have a couple more questions.
4 Do you want to finish the directs or take a quick break?
5 A. No, if you're going to finish, finish.
6 Q. Are you sure?
7 A. Yes.
8 Q. Okay. I'm going to show you what I've marked
9 as Plaintiff's Exhibit No. 71, and do you recognize that
10 to be a list of medical services that were rendered to
11 you beginning at -- with Abbott House and going down
12 through Walgreens?
13 A. You talking about the first page?
14 Q. Yes.
15 A. Yes. Yeah, it looks like it.
16 Q. And is it your understanding that all of these
17 medical services have been paid for?

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18 A. Yes.
19 MS. KAVENY: Can I have a minute your Honor?
20 THE COURT: Yes.
21 BY MS. KAVENY:
22 Q. Okay. The last thing I want to ask you about
23 is your law license and your attempt to return to -- as
24 a lawyer since 2007.

1 At some point in time did you reinstate your
2 law license?
3 A. Yeah. I put it on a special status for
4 two years and then -- yes.
5 Q. Okay. And what did you have to do to get your
6 law license reinstated?
7 A. Mostly just pay a back -- my past -- they have
8 a dues, annual dues, and because I hadn't paid it for a
9 couple years, I had to pay -- it wasn't that much. It
10 was a small penalty just for late payment.
11 Q. Did you have to take a -- a bar exam again?
12 A. No.
13 Q. Did you have to take any law board exams?
14 A. They instituted I think in 2009, they had what
15 they call a -- continuing legal education requirements,
16 so I had to meet those.
17 Q. So you had to attend a couple classes and
18 provide evidence that you had sat through those classes?
19 A. I don't remember. Yeah, yeah, you have to do
20 that with the -- you're right, with the -- with the --

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21 with the State, yeah. You have to be in good standing,
22 yeah.
23 Q. Other than doing continuing legal education
24 courses that you sat through and paying a fine, was

1 there any type of academic testing or competency testing
2 that you had to go through in order to reinstate your
3 law license?
4 A. No.
5 Q. And what about getting law -- professional
6 liability insurance, is that something that you apply
7 for and you pay for?
8 A. After I got my license back?
9 Q. Yes.
10 A. Yeah, I don't know when it started, but I got
11 it pretty promptly.
12 Q. Did you try to do a couple pro bono cases
13 after you got your law license back?
14 A. Yeah. People -- I was -- after I got it
15 back -- you know, people would ask me -- friends, you
16 know, ask you questions. I did have some active through
17 some various organizations, a couple of things, yes.
18 Q. You have not accepted any work from a client
19 for payment that you're actually being paid for; is that
20 right?
21 A. Oh, since --
22 Q. Since 2 --
23 A. Since I got injured, no.

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24 Q. Right. Why is it that you feel that you're

1 unable to represent clients professionally in legal
2 matters any longer?
3 A. Well, the question is not whether I feel. The
4 question is I can't.
5 Q. Okay. Well, tell us why you can't.
6 A. It's the result of my brain injury.
7 Q. Tell us what you think about your brain injury
8 prevents you from returning to the type of work that you
9 did before.
10 MR. ATWOOD: Object to the foundation.
11 THE COURT: Overruled.
12 THE WITNESS: Right now my biggest issues are
13 attention span, ability to stay focused and
14 concentrated. I'm not -- I was never -- I'm not stuck
15 on stupid, you know. I'm sorry to use the word. But --
16 and I get fatigued very easily as a result of --
17 BY MS. KAVENY:
18 Q. Mentally?
19 A. Mentally and physically. Just "pfff"
20 (phonetic), duck out.
21 Q. Do you recognize, [redacted] as you sit here and
22 testifying before this jury that you are a significantly
23 different man than you were in -- prior to August
24 of 2007?

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1 A. Not -- well, personality-wise or as far as my
2 ability to do things?
3 Q. You tell me. What's different?
4 A. No, I mean, I've had different -- once you
5 get, you know, stamped bad, people stop talking to you,
6 but I, you know, tried to move on best I can. I should
7 be depressed but I'm not. The -- I'm sorry, am I
8 different? I mean, yeah. I had this nice little law
9 practice. It was my life. It's gone. I -- I'm not --
10 I'm going to sit her and whine.
11 Q. You're not what?
12 A. I'm not going to sit here and whine, you know.
13 Q. I know you're not going to whine and you're
14 not going to complain, but what do you notice is
15 different about yourself?
16 A. Well, I just said the three things. I mean,
17 I -- you get tired of being tired. I don't like being
18 tired. That's one. I don't like the fact that I was a
19 very active reader, and it's been getting better, I can
20 read, like, longer stuff for long times, but I can't
21 read as much as I'd like to.
22 I mean, you can give me a case, I'll read it
23 for you, tell you what it's about, but you can't just
24 read one case. It's a little more than that, than doing

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1 and practicing law.

2 Q. Do you recognize that your thinking process

3 and your attention span is different now?

4 A. The -- when I'm on, there's not a lot

5 different, but there's some different. I don't -- I

6 don't -- as far as, you know -- I don't know how to

7 answer that. I don't know how to answer that.

8 Q. What's the most difficult part for you in the

9 changes in your life from August 6th of 2007 to the

10 present time? What's the most difficult part for you?

11 A. Accepting myself. Not being able to practice

12 law again. I mean, that was -- that was -- it was

13 tough. I don't know.

14 MS. KAVENY: That's all I have. Thank you.

15 THE COURT: Okay. Ladies and gentlemen, we're

16 going to take our lunch break until 1:30.

17 Please don't discuss the case amongst yourself

18 even though you're continuing to hear evidence. You

19 can't form or express an opinion with anyone including

20 your fellow jurors. No independent research or

21 investigation on any subject related to the case.

22 During the break the witness knows, as all the witnesses

23 do, that they cannot speak about the case with any of

24 the attorneys, whether the attorneys call them or the

1 other side.

2 All rise for the jury.

3 (Lunch recess.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)
3
4 NICOLE MARIE DeBARTOLO, being first duly
5 sworn, on oath says that she is a Certified Shorthand
6 Reporter and Registered Professional Reporter doing

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7 business in the City of Chicago, County of Cook and the

8 State of Illinois;

9 That she reported in shorthand the proceedings

10 had at the foregoing trial;

11 And that the foregoing is a true and correct

12 transcript of her shorthand notes so taken as aforesaid

13 and contains the proceedings had at the said trial.

14

15

16

17 ____

18 NICOLE MARIE DeBARTOLO, CSR, RPR
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Suite 2550

19 Chicago, Illinois 60601
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21 Illinois CSR License No. 084-00412

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - LAW DIVISION
6
7 [redacted])
Plaintiff,)
8 vs.) No. 2017 L 4610
BURKE WISE MORRISSEY &)
9 KAVENY, LLC, an Illinois)
Professional Limited)
10 Liability Company, DAVID)
J. RASHID, and ELIZABETH)
11 A. KAVENY, individually,)
and as agents, servants,)
12 and employees or BURKE)
WISE MORRISSEY & KAVENY,)
13 LLC, an Illinois)
Professional Limited)
14 Liability Company, jointly)
and severally,)
15 Defendants.)
16 REPORT OF PROCEEDINGS at the motion of
17 the above-entitled cause before the Honorable
18 MARGARET BRENNAN, Judge of said Court, on the
19 5th day of April, 2018, at the hour of 10:50 a.m.
20
21
22
23 REPORTED BY: Jamye Giamarusti, CSR
24 LICENSE NO.: 084-004183

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Page 2

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2
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17 Representing the Defendants.
18
19 ALSO PRESENT:
20 Mr. [redacted] [redacted]
21
22
23
24

Page 3

1 MR. GOODSNYDER: Judge, two
2 suggestions. One is, I just want to introduce
3 Mr. [redacted] He is present in court before you.
4 THE COURT: Hello, sir.
5 MR. GOODSNYDER: And then just a
6 suggestion on the mechanics of it because
7 obviously there's, you know, multiple counts and
8 a lot of issues to address.
9 My own suggestion would be I think it's
10 most effective if we could argue county by
11 county as opposed to waiting until counsel's
12 done with addressing all six counts and then
13 having to go back and sort of address.
14 So, if counsel doesn't have an issue or
15 the court doesn't have an issue, I think that's
16 a logical way of doing it.
17 THE COURT: Okay.
18 MR. VAUGHT: Whatever is most
19 convenient for the court.
20 THE COURT: I can do either one. So,
21 I'm fine with going count by count. That's how
22 I have my memo laid out.
23 Let's go with Count 1.
24 MR. VAUGHT: Your Honor, good morning.

Page 4

1 I'm Adam Vaught on behalf of defendants. We
2 know we've extensively briefed this, so I don't
3 want to belabor by just repeating things that
4 are in the brief, so I just kind of want to sum
5 up the arguments at least now for Count I.
6 In Count 1, plaintiff is alleging that
7 there's a violation of the Illinois Mental
8 Health Disabilities Confidentiality Act.
9 At issue in the entire case is whether
10 or not a press release that was issued on behalf
11 of the firm following securing a record setting
12 verdict for the plaintiff was a violation of
13 various theories.
14 They first allege that the Mental
15 Health Disability Confidentiality Act provides
16 for relief against an attorney for issuing a
17 report of a public trial.
18 The first district has held that the
19 act only applies to the therapeutic
20 relationship. That's the Kwig vs. Walgreens
21 case. The purpose behind the act, according to
22 the first district, was that to ensure
23 confidentiality and the therapeutic relationship
24 between a treater and patient.

Page 5

1 In response, the plaintiffs have cited
2 to a couple fifth district cases that state that
3 there could be action against attorneys. While
4 I don't disagree that in those cases, there were
5 actions against attorneys, that is not what is
6 at issue here.
7 Specifically, in those cases, there
8 were allegations made under Section 10(d) of the
9 act, which states that before issuing a
10 subpoena, the attorney has to get a written
11 order from a judge allowing the subpoena of
12 confidential records.
13 In those cases, there was questions of
14 whether or not a court had approved that prior
15 to the subpoena. That's not what was at issue
16 here in case. In this case, there's no
17 suggestion that there were records that were
18 improperly secured without a written order from
19 the court prior to sending a subpoena.
20 Here, the issue is that the allegation
21 is that the information that was issued in the
22 press release, which was just the report of what
23 had happened at the trial is somehow protected
24 by the act.

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Page 6

1 THE COURT: Excuse me one moment.
2 Could you not click a pen. It's a pet peeve of
3 mine.
4 MR. [redacted] I'm very sorry.
5 THE COURT: Okay. Continue.
6 MR. VAUGHT: So, the issue then is
7 that, you know, the act doesn't apply to
8 statements made regarding a public trial. We're
9 not talking about a specific record that was
10 disclosed or improperly secured by a subpoena
11 that wasn't authored by the court.
12 So under Kwig and under specifically
13 10(d) of the act, the act does not apply to the
14 situation.
15 Furthermore, 10(a) of the act states
16 that if a person puts their mental health at
17 issue, they wave the protections and
18 confidentiality of the act.
19 In the underlying case, the issue was
20 whether or not the defendant had been negligent
21 in supervising the plaintiff based on his mental
22 health condition. And so by putting that
23 affirmatively at issue in the trial, the
24 protections of the act were waived.

Page 7

1 And so, under Kwig, it doesn't apply
2 under 10(d). It doesn't apply under 10(a).
3 Even if it would have, it would have been
4 waived.
5 MR. GOODSNYDER: Good morning, your
6 Honor. Chris Goodsnyder on behalf of Mr.
7 [redacted] who is present before you.
8 Just a few things preliminarily. In
9 the original motion to dismiss, the argument
10 they reference, essentially some sort of
11 assertion that this is a legal malpractice case.
12 This is not a legal malpractice case. We're not
13 contesting the outcome of the underlying case or
14 the handling of the underlying case.
15 The references in the complaint to
16 events that occurred during the underlying case
17 are purely to give context and reference for
18 what was done, what was proper, and what was
19 improper in terms of the issuance of the press
20 release and the subsequent conduct and also to
21 give context for the fact that the material that
22 was introduced during the litigation and at
23 trial, the fact that it wasn't sealed in a -- it
24 wasn't sealed just makes it accessible to anyone

Page 8

1 who finds the material through the online
2 internet searches that are highlighted in any
3 search of Mr. [redacted] name. The very first
4 thing that comes up is the reference to the
5 $4.2 million verdict in this case and the press
6 release and links back and forth between the
7 press release, the website, and the newspaper
8 articles.
9 So, just context, what we're saying is
10 it's not in and of itself an impropriety that
11 the underlying case wasn't sealed. It just
12 gives access to anyone who is determined to do
13 any due diligence to follow through. They can
14 rapidly find this material through just
15 accessing the Clerk of the Court's website. So,
16 that's just context for you.
17 What's at issue in Count 1, and I cite
18 numerous cases on the standard for the Mental
19 Health and Developmental Disability
20 Confidentiality Act, which I'll call the act or
21 the Mental Health Act, at length the cases talk
22 about the purpose even above and beyond a
23 physician/patient privilege and HIPAA. It is
24 the most protected form of information regarding

Page 9

1 a person's individual mental health or health
2 that the legislature determines the need to
3 create this statute.
4 So, here we have the most high level
5 information at issue in this case. We're not
6 talking about, you know, a diagnosis of high
7 cholesterol or having a fractured arm. We're
8 talking about diagnosis, treatment, and
9 prognosis of mental healthcare. So, that's
10 what's one of the issues here.
11 The core issue that is woven through
12 all of the -- the motion to dismiss, the
13 response brief, and the surresponse -- surreply
14 rather, all pertain to, I'm assuming, just a
15 mistake in argument. And I characterize it as a
16 phrase fair game, which is just a colloquialism
17 to say they felt that they had the right to do
18 whatever they wanted to do with this
19 information.
20 I don't even know how much thought they
21 gave into it when Ms. Kaveny issued the press
22 release in May. I think what she was driven to
23 do is to take credit for a good outcome in a
24 challenging case, and by the fact of all the

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Page 10

1 social media that she used and the fact that the
2 references on their own website conclude with a
3 request that potential clients submit their
4 information and contact her about representing
5 them, I think that's what it was all driven to.
6 I don't think they gave any sort of
7 analysis to whether they had the right to use
8 this information.
9 So, again, it goes back and forth and
10 will come up -- it comes up throughout is the
11 concept that something that happened at a public
12 trial is, again, my phrase not theirs, fair game
13 or they were allowed to use it for whatever
14 context they wanted to use it for.
15 So, we have two distinctions here.
16 One, this is not the lay public or the media
17 using this information. It's not someone who
18 sat in the courtroom who overheard the
19 testimony. This is -- and it's not even the
20 defense attorneys. These are his own attorneys.
21 They are duty bound by the rules of
22 ethics to limit what they use information
23 relating to the client for. And they certainly
24 can't use it to his adverse interest.

Page 11

1 On a timeline issue, we have to
2 remember, this press release, this wasn't
3 something, you know, done during the litigation
4 to essentially gain favor or influence a jury, a
5 potential jury.
6 The case was concluded. They were in
7 post-trial motions when Ms. Kaveny issued this
8 press release. There's nothing in the press
9 release that served any interest for
10 Mr. [redacted]
11 And, additionally, we'll talk about the
12 test of informed consent for her to release this
13 information. There's no even argument that
14 somehow, one, that she requested the consent, or
15 that it would have been informed because clearly
16 even if it was, there was no value to
17 Mr. [redacted] to release this information.
18 So, that's a little bit of context for
19 you.
20 Originally, it's sort of a -- I don't
21 mean to be too pejorative, but a bit of a shell
22 game with the Mental Health Act and the
23 arguments that have been raised from the motion
24 to dismiss, the reply brief and the surreply,

Page 12

1 because every time I addressed an issue that
2 they raised supporting their argument that Count
3 1 be dismissed, then they changed their
4 argument.
5 So, originally the tone of the motion
6 to dismiss was they cite the Kwig case for the
7 purported argument that under no circumstances
8 can an attorney be held liable for violating the
9 act. And they cite Kwig, and they cited one
10 sentence out of Kwig for the limitations on it.
11 So, one, I'll address Kwig. But, two,
12 then I address the fact that, in fact, lawyers
13 can be held liable for violating the act and
14 then the position changed again to somehow the
15 distinction between 10(a)(1) and (a)(8), which
16 we'll address and 10(d). They don't even
17 address 5(d).
18 But, again, the fundamental argument
19 that we have through all their positions is that
20 if it was testified to at trial, it becomes fair
21 game for them to use in any way. We know from
22 the two provisions that I cite, 5(d) and
23 10(a)(8), that the legislature specifically
24 prohibited redisclosure.

Page 13

1 So, there was a concept when the act
2 was passed that it wasn't sufficient enough to
3 restrict access to the information originally.
4 They had to address what would happen if it was
5 passed on to a third party.
6 So, what we have here is highly
7 protected information regarding Mr. [redacted]
8 diagnosis, treatment and prognosis. And then on
9 top of it, there were factual errors, and I
10 think Ms. Kaveny, again, in a sense of
11 posturing, she added additional facts about
12 Mr. [redacted] healthcare to make it seem
13 essentially more egregious and essentially I
14 would say that she did a, quote, better job.
15 So, there's even factual inaccuracies
16 in her press release and her article. But
17 fundamentally here's the premise.
18 In the Kwig case, that case dealt with
19 whether a pharmacist discussing someone's
20 prescription with a spouse would violate a
21 different section of the act, which is
22 Section 5, which deals essentially with if a
23 persons -- if two people that were treating the
24 patient needed to communicate about the records

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Page 14

1 and they got written consent, the second
2 recipient would also be duty bound to maintain
3 the confidentiality of the information and they
4 could be liable for redisclosure. So, that's
5 really 5(d).
6 So, what they said is to the
7 distinction in Kwig turned on the fact that a
8 pharmacist is not treating a person; therefore,
9 they don't have that same exchange of
10 information and they drew an arrow position on
11 the therapeutic relationship.
12 We've never argued that his attorneys
13 were in a therapeutic relationship. So, in our
14 response brief, I cite to these cases where,
15 yes, attorneys can be held liable under the act
16 for improprieties in violating the
17 provision -- Section 10 deals with essentially
18 the context of litigation.
19 And if you -- because it's so highly
20 protected, if the attorney goes so far as to
21 just issue a subpoena without getting a court
22 order or sends a subpoena without attaching the
23 court order, that in and of itself is a
24 violation. So, I cite those provisions.

Page 15

1 Then it evolves from, okay, fine,
2 attorneys can be held liable, but somehow they
3 say that they have free rein under 10(a)(1),
4 which we've never argued. 10(a)(1) is --
5 Section 10 pertains to the use of the records,
6 mental health records in litigation.
7 And we've never contested the fact that
8 the defendants in the underlying case, the
9 hospital and the physician, who filed a motion
10 back in 2010, June of 2010, the defendants filed
11 a motion and they got leave of Court to issue
12 subpoenas to Mr. [redacted] mental health
13 providers.
14 We've never contested that that was
15 improper. We've never said even that his client
16 did something improper in allowing that to
17 happen. There were protective orders in place.
18 Here's what we're saying.
19 THE COURT: His clients actually
20 weren't representing Mr. [redacted] at that time.
21 MR. GOODSNYDER: Correct. But at any
22 point in time, you know, we've talked about the
23 context for the fact that the case remained
24 pending.

Page 16

1 THE COURT: I understand. But I just
2 want to clarify in 2010 his clients were not
3 representing Mr. [redacted] not until 2014.
4 MR. GOODSNYDER: Right. And we're not
5 saying that anything was done improperly in the
6 underlying case with regard to the records.
7 What the records were used for by the defendants
8 were to challenge the extent of Mr. [redacted]s
9 harm and causation.
10 What his lawyers did at trial was to
11 have their own expert testimony on the topic, to
12 examine Mr. [redacted] on the topic, and to make
13 their arguments to the jury. All of that was
14 completely proper.
15 What they did afterwards is what we're
16 focusing on here. Section -- again, I think the
17 only phrase to say would an arbitrary -- and
18 they cite no case that said -- so we have
19 10(a)(1) describing the opening the door theory,
20 which we don't say -- we concede.
21 Mr. [redacted] opened the door by claiming
22 emotional harm. The defendants in the
23 underlying case, the hospital and the
24 physicians, had the right to subpoena this. But

Page 17

1 then as a modifier of that right, their Section
2 (a)(8), in other words, literally just the
3 second page of the same statute that says, even
4 though records or communications may be
5 disclosed when such are relevant to a matter and
6 issue and any action brought under this act and
7 proceedings preliminary thereto provided that
8 any information so disclosed shall not be
9 utilized for any other purpose nor redisclosed
10 except in connection with such action or
11 preliminary proceedings.
12 So, everyone in the underlying case had
13 the right once they followed proper procedure to
14 use that and make arguments based upon the
15 extent of his harm, prognosis, and all that.
16 And all that was proper.
17 What we have here is Ms. Kaveny taking
18 that highly, highly protected information and
19 using it for self-aggrandizement, which was
20 putting it on her website, issuing press
21 releases, being quoted in newspaper articles, in
22 widely published periodicals.
23 We have the Chicago Sun-Times, then we
24 have on top of it for good measure the Chicago

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Page 18

1 Daily Law Bulletin where Mr. [redacted] was a
2 licensed attorney. So, you add, you know, if he
3 were a janitor or a physician or a priest, you
4 would have a different issue.
5 He's an attorney practicing law in
6 Chicago, corporate law, and the front page of
7 the Daily Law Bulletin is an article about that
8 he'll never practice law again and he has -- he
9 can't make friends. I mean, the expansion of
10 what she felt the need to get into. Like I
11 said, besides inaccuracies, it went well beyond,
12 you know -- into all of these protected
13 information.
14 So, our position as to Count 1, the
15 statute applies that Section 10 deals with use
16 of this material in litigation. And you have
17 two places in the act that prohibit
18 redisclosure. You have the context of consent,
19 which will be like the physician to physician
20 issue where the patient gets consent and then
21 the physician talks about it with their suppose
22 at the dinner table and that's a violation.
23 They had the access to use it for
24 themselves for the treatment; then they talk

Page 19

1 about it at dinner with their spouse and that's
2 a violation.
3 Then you have 10(a)(8) which talks
4 about it in the litigation context. If
5 essentially -- this whole Section 8 would be
6 moot if once it came out at trial there would be
7 no reason to have a redisclosure requirement
8 because according to the defendant's argument,
9 once it came out at trial, there would be no
10 such thing as redisclosure.
11 You could print it and make wallpaper
12 out of it. It's all fair game. Which, of
13 course, it isn't and that's why the legislature
14 passed the modifying section right below (a)(1)
15 is (a)(8) talking about redisclosure.
16 So, as we'll talk about in the other
17 context, again, about call it fair use or
18 whatnot, this information belonged to my client.
19 It was restricted pursuant to protective order,
20 pursuant to the subpoena and the court order on
21 the topic. It didn't become fair game for his
22 attorneys to use for their own gain at the
23 conclusion of the case.
24 THE COURT: Reply.

Page 20

1 MR. VAUGHT: Briefly, your Honor.
2 First, I guess I just want to address
3 the way the arguments were -- counsel said the
4 arguments were raised.
5 We said that it doesn't apply under
6 Kwig; he responded that it does. And so then we
7 just answered -- I mean, it's argument,
8 response, rebuttal. That's what happened. We
9 weren't trying to, you know, put something new
10 at the back end.
11 So, if that's the suggestion, I just
12 want to make sure we were just responding in
13 response to the citation the cases that they
14 cited to.
15 But, specifically, to redisclosure, the
16 act says that records or communications that are
17 relevant to any matter and any matter brought
18 under this action act. The case below wasn't
19 brought under this act. It was a tort claim.
20 And so, I mean, that specific section
21 is talking about a proceeding under the act.
22 It's not talking about, you know, anything else.
23 That's where the waiver issue comes in, in
24 10(a), which is that if you put it at issue,

Page 21

1 then you waive the confidentiality, which makes
2 sense because if you're going to make a claim in
3 a public setting, which is what a trial and the
4 courts are, that, you know, you're mental health
5 is at issue, then the confidentiality has to be
6 waived in order to fairly adjudicate things in a
7 public setting.
8 I mean, that kind of comes down to the
9 core of this case is what is it that was really
10 disclosed? Was it confidential records or was
11 it just the facts of what happened at a public
12 trial?
13 So, for the reasons in the brief, you
14 know, we don't believe that the act applies.
15 And that's -- I can move on.
16 MR. GOODSNYDER: Very briefly on this
17 topic.
18 In their brief, they make -- in two
19 sentences, they make this purported argument
20 that somehow -- they don't cite a single case
21 that says that the interpretation that (8) only
22 applies -- that, again, one that is fair game
23 afterwards or that the underlying case that's
24 the redisclosure requirement has to be

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 22

1 essentially only applies to, if you read
2 counsel's argument, to its natural conclusion.
3 So, you have (d) which comes after 8(a)
4 that talks about, like, improper subpoena
5 practice. And then he would say -- the
6 defendant's interpretation would -- the
7 redisclosure in 8(a) would somehow be modifying
8 the (d) section that comes after.
9 In other words, the only time the
10 redisclosure requirement would be a limit would
11 be all these cases that are in the divorce
12 context where people subpoena their ex-spouse's
13 mental health records improperly and it's only
14 when you sue the lawyers for improper subpoena
15 practice that somehow the redisclosure
16 requirement would happen.
17 You also have in here a reference to --
18 which is nonsense -- you have the reference to
19 preliminary proceedings so you couldn't even
20 have this come up in motion practice, never even
21 have a trial, and you still have a redisclosure
22 issue. So, there might never be a public
23 disclosure. There might never even be a trial,
24 but the records are exchanged.

Page 23

1 So, the interpretation that somehow
2 this interpretation -- you have to be -- the
3 only time redisclosure applies is if you're
4 litigating over an improper disclosure. You're
5 suing -- you're filing a case where you're suing
6 someone for improper disclosure and then there's
7 some extra redisclosure.
8 It's an artificial distinction that is
9 clearly not in here. The cases are clear about
10 what the purpose of this is. It doesn't become
11 fair game. The defendants in the underlying
12 case and the experts had access to this
13 information. It was testified to.
14 But it doesn't mean that anyone in the
15 case are then able to take those records,
16 because we've all seen in the context of, like,
17 clawback agreements where the context is, yeah,
18 at the end of the case, it comes back because we
19 don't -- you're not going to spend the rest of
20 your life thinking that your medical records of
21 what you talked to your therapist about are
22 going to be all over the internet because you
23 filed a lawsuit, a PI case, where you said you
24 were losing sleep or something at night.

Page 24

1 So, I'll give counsel the last word,
2 but I think their interpretation is they don't
3 cite a single case on it and it's artificially
4 narrow and it doesn't even logically apply.
5 Section 8 is a Section 10 (a)(8) and (d) is the
6 subpoena stuff. So, thank you.
7 MR. VAUGHT: I'll be very brief.
8 The fact that there's no cases cited
9 just means this issue may never have been
10 litigated before. So, I mean, that's a statute.
11 The Court can read the statute and interpret it.
12 That's not uncommon.
13 And I just want to -- he keeps
14 referring to records. There were no records
15 that were disclosed as part of this press
16 release. It was just the fact that were
17 testified to at trial. It wasn't like medical
18 records were sent out into public.
19 So, I rest on that. If you want us to
20 move two Count 2?
21 THE COURT: Yes. Because I can just go
22 through at the end and tell you what's in and
23 what's out.
24 MR. VAUGHT: Okay. So Count 2 is

Page 25

1 public disclosure of private facts.
2 You know, as I've alluded to, this
3 press release and the news reports were
4 regarding what happened at trial. The U.S.
5 Supreme Court has said that trials are public
6 events and what happens to them are public.
7 And so there's not a disclosure of
8 private facts when the facts that were disclosed
9 were facts that were made publicly and testified
10 to before a jury.
11 Specifically, though, to this count, it
12 is also barred by the statute of limitations,
13 735 ILCS 5/13-201, states that there's a
14 one-year statute of limitations that was
15 applied. The fourth district has applied it to
16 public disclosure of private facts in the
17 Johnson case.
18 The publication at issue was made May
19 14th, 2015. This lawsuit wasn't filed until
20 May 5th, 2017, nearly two years later.
21 In response, counsel says, but this
22 still lives on the internet and so, therefore,
23 those are republications, but the single
24 publication act states that for claims of

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 26

1 defamation or claims of invasion of privacy
2 towards that. It's the first publication is
3 when the statute of limitations begins to run.
4 It is not subsequent republications.
5 So, to the extent that, you know, there
6 are "republications," and I'll admit the law is
7 a little -- we're living in -- you know, we're
8 applying print principles to the internet. So,
9 I don't know, you know -- once it goes on there,
10 is that the only publication or at any time it's
11 refreshed. I guess I don't quite know.
12 But, regardless, the single publication
13 act would cover so that the first time it's
14 printed onto the internet, or published onto the
15 internet, that's when the statute of limitations
16 would have begun.
17 So, one we don't think applies because
18 it's not public facts -- it's not private facts.
19 And, two, even if it was, the statute of
20 limitations would bar Count 2.
21 MR. GOODSNYDER: So, again, there's two
22 concepts. One, again, that sort of sense
23 that -- again, I don't think that the defendants
24 gave any thought to it at the time they were

Page 27

1 doing it because their website was replete with
2 references to other clients' matters that they,
3 you know -- let's essentially call it, you know,
4 not just in their belt of what they had
5 accomplished for their clients. I'm sure
6 they're very distinguished attorneys and very
7 successful.
8 But when they, at the time, chose to
9 include all the personal identifying
10 information, including his name, his age, his
11 practice, along with -- and counsel's dismissive
12 back in the other count about that they weren't
13 literally photocopying medical records.
14 But when someone releases your
15 prognosis, your diagnosis, and that where --
16 inaccurately, but where and when you were
17 treated for some issue, those are essentially
18 effectively the same sort of release.
19 So, what we have here, again, is
20 they're not the press and they're not the
21 public. The case that counsel cites is a
22 35-year old case. And in it, the Supreme Court
23 said essentially we'll leave privacy matters
24 like this -- it was a prior restraint case,

Page 28

1 which, obviously, we know from con law, is, you
2 know, first amendment, highly -- strict scrutiny
3 and a prior restraint on top of that. And they
4 said, essentially, it's a state law question of
5 how the state is going to interpret privacy
6 issue. And then after that, Illinois passes the
7 Mental Health Act. So, that goes to certainly
8 the public policy in Illinois is to restrict
9 these things.
10 Fundamentally, we have also because
11 counsel's clients were, again, not third
12 parties, not the press, not people sitting in
13 the courtroom. They were his attorneys. We get
14 to look to what ethical duties did they have and
15 those are defined by rules of professional
16 conduct.
17 So, clearly, there's also another
18 fundamental distinction on this concept of sort
19 of what I call fair use or fair game or it came
20 out at trial. We're not arguing that what came
21 out at trial is attorney-client privilege.
22 So, the tone that we get is
23 essentially -- well, if you testify to it in
24 public, sort of, like, if a third party is

Page 29

1 present for an attorney-client conversation, you
2 lose the privilege.
3 But, what we have here is, the test is
4 information relating to the representation. So,
5 1.6(a) says a lawyer shall not reveal
6 information relating to the representation of a
7 client unless the client gives informed consent.
8 Rule 1.(o)(e) talks about informed
9 consent, which clearly we didn't have in this
10 case. They don't even argue it.
11 1.4 defines how you get informed
12 consent, which clearly we don't have.
13 1.7 talks about concurrent conflicts of
14 interest, which, obviously, as we talked about,
15 the sole purpose of issuing the press release
16 the day after the trial was not to do any favor
17 for Mr. [redacted] It didn't do any favor for him
18 and that was not the purpose. What it was to do
19 was to generate new business for Ms. Kaveny and
20 the firm. She had a conflict, which makes it
21 even more egregious.
22 1.8(b), a lawyer shall not use
23 information relating to the representation of a
24 client to the disadvantage of the client unless

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 30

1 the client gives informed consent. Again, it's
2 information relating to the representation
3 that's the test. So, we have that.
4 Then, we know from, and I attached to
5 the surresponse, ABA Formal Opinion 4.79, which
6 should put to rest essentially the whole
7 underpinnings of their argument of this fair
8 game issue because it came out at trial.
9 There's an exception to permit
10 attorneys to disclose information related to the
11 representation if it becomes, quote, generally
12 known. But it says, specifically, information
13 is not generally known merely because it is
14 publically available or might qualify as a
15 public record or a matter of public record.
16 It goes on to say that -- the whole
17 opinion talks about things that come out at
18 trial don't become generally known. We all know
19 from working in this building how hard it is to
20 get to records. They're either on the shelf;
21 now they're converting to e-filing. You don't
22 even have access remotely to e-filing.
23 If someone wanted to do any sort of due
24 diligence on Mr. [redacted] they would literally

Page 31

1 have to go to the 11th floor now, either pull
2 the file off the shelf or get some scanned copy.
3 But they don't have to do that because
4 the very first thing when you type in his name
5 is, $4.2 million verdict for lawyer who
6 attempted suicide in psyche ward. That's the
7 first thing.
8 So, any potential client of
9 Mr. [redacted]s who says to him I just need to
10 know where your address is, they're going to
11 find this article and then they're going to find
12 links back and forth with the website.
13 And on top of it, there's even a
14 historic website. On the issue of the statute
15 of limitations, I did address the topic by
16 showing how often the law firm's website was
17 updated and I showed that they would add these
18 additional, call them successes, periodically so
19 we know that for sure they were updating --
20 while they were leaving Mr. [redacted] -- the
21 reference to Mr. [redacted] $4.2 million verdict,
22 they were updating it with things well within
23 the last -- the year before the filing of the
24 case. We know that.

Page 32

1 So, on the single publication issue,
2 we've got at least a question there. But
3 even -- we also -- the test under the single
4 publication rules say if you use -- if you meant
5 to reach different audiences, that also limits
6 the effectiveness of the single publication
7 rule.
8 So, a search of Ms. Kaveny's social
9 media shows a Facebook page for the law firm
10 with references to this verdict and then again
11 also updated information about things well
12 within a year before the filing of the case,
13 where on the Facebook page she's trying to reach
14 people who Facebook users talking about this
15 verdict, linking back and forth to the press
16 release and disclosing all those pertinent
17 details about Mr. [redacted] mental health
18 history.
19 And they also have a LinkedIn page.
20 And we see on the current -- where there's a
21 reference to the $4.2 million verdict right
22 below it is another link from October of 2016.
23 So, at the very least, it's a question
24 of fact that we need to do in discovery. We

Page 33

1 know that once I got involved in the case and I
2 issued the cease and desist letter, about a
3 month or two later, they take down the reference
4 on their website, but they still haven't taken
5 down the LinkedIn or the Facebook references.
6 And it's a question of fact about whether they
7 were trying to reach alternative audiences
8 within the one year of the filing of the case.
9 So, on the issue of, it didn't become
10 generally known, it was still governed by the
11 rules of professional conduct. It was
12 information related to the representation.
13 The other case that I cite, that
14 Gilsdorf ARDC opinion is, I think, nearly on
15 fours with how the defendants in this case
16 handled it.
17 Briefly, in that case, my own
18 interpretation, that the criminal defense
19 attorney who probably had issues with the
20 practices of the local police department thought
21 he had a gotcha moment when they gave him an
22 undercover video of his client purportedly
23 buying drugs illegally and he thought it showed
24 them planting it.

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 34

1 So, in the interest of his advocacy for
2 the general proposition, he takes a video of his
3 client, uploads it to his YouTube web page
4 showing his client literally selling drugs to an
5 undercover police officer.
6 It didn't serve any interest of the
7 client and he certainly didn't have informed
8 consent. And they said it wasn't fair game for
9 him. Just because it had been tendered to him
10 through discovery, it didn't mean that he had
11 the right to disadvantage his client with the
12 use of that information.
13 So, the fact that these -- there was
14 testimony at trial regarding Mr. [redacted]s
15 mental health issues, that didn't give
16 Ms. Kaveny the right to have interviews with the
17 newspapers, issuing press releases, putting it
18 on her Facebook, putting it on the firm's
19 website, putting it on LinkedIn.
20 So, at the very least, one, it was a
21 private fact. We know that. It wasn't
22 generally known. The only reason why in today's
23 day and age you could argue maybe it's generally
24 known is the fact that they're the ones who put

Page 35

1 it out there. They're the ones that put it in
2 everywhere where it pops up all over a Google
3 search of Mr. [redacted]
4 They certainly can't claim that after
5 three years of it being circulated in the mass
6 media that somehow now it's generally known. It
7 certainly wasn't generally known when they
8 issued the press release.
9 So, at the very least, it's a private
10 fact and there's a question of fact about
11 whether it accrued inside of the one year with
12 the different audiences that we have, you know,
13 and the different social medias.
14 MR. VAUGHT: First, you know, I utterly
15 reject any suggestions that Ms. Kaveny or any of
16 the clients violated the rules of professional
17 conduct. I just want to state that.
18 But regardless, Count 2, public
19 disclosures of private facts, there isn't a duty
20 element to this tort. It's just whether or not
21 it's a private fact.
22 There is no cases that have been cited
23 suggesting that somehow if the rules of
24 professional conduct apply that somehow what

Page 36

1 would be a public fact is now a private fact.
2 It's just is it a public fact or a private fact.
3 The information that was put in a press
4 release and then was then reported in the
5 newspapers were facts that were testified to at
6 trial. There was a court reporter. They were
7 written down. I mean, the testimony was written
8 down. There was evidence that was introduced.
9 There was 12 members of the jury. The public
10 was free to come and go during the trial. It
11 was a public fact.
12 The fact that more people know about it
13 when it comes into a newspaper than had, you
14 know, it not been in the newspaper doesn't
15 change the fact that it was a public fact.
16 The Supreme Court has stated, yes, on a
17 case that is factually distinguishable. But the
18 general principle is why we cited to it. The
19 Supreme Court has said that a public trial is a
20 public venue. So facts disclosed in them are
21 public.
22 And so the rules of professional
23 conduct I think are kind of a straw man argument
24 for this count. They really don't have any

Page 37

1 bearing on whether or not it was a public fact
2 or a private fact.
3 As to whether or not there was a
4 question of fact on different audiences, you
5 know, earlier counsel said that they issued a
6 press release for the purpose of getting new
7 clients. And now they're saying is question of
8 fact for what the audience is for.
9 You know, it's, like, we're trying to
10 have it, you know, both ways. You issue a press
11 release because you're reporting on a verdict
12 that is, you know, many reasons that you would
13 do it, but the audiences are all going to be the
14 same. It's for the public, you know, to have
15 knowledge of what happened at a trial, which is
16 a public event. It was a record-setting
17 verdict.
18 The public has a right to know, you
19 know, how their courts are operating, what's
20 going on in their courts, why are people being
21 held liable for certain acts. And so if there
22 isn't benefits to the firm that people realize,
23 yes, they are exceptional lawyers and maybe I
24 would go to hire them, that's great. But the

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

1 audience is the same. It's the public. It's
2 not, you know, one specific here, one specific
3 person here.
4 So I think to suggest that it creates a
5 question of fact is really just trying to find a
6 way through the motion to dismiss to, you know,
7 get the Court to pass it in order to move
8 forward. But clearly it's a public fact.
9 THE COURT: Go to Count 3.
10 MR. VAUGHT: Okay.
11 So, Count 3 is wrongful intrusion upon
12 seclusion. I think that is even less apt here.
13 The tort is essentially a privacy tort that was
14 based on people rummaging through your papers to
15 find out, you know. You go through somebody's
16 diary to find out about them or their bank
17 records.
18 The tort is upon finding out new
19 information. It is not the publication
20 information. The Supreme Court has said that;
21 Illinois Supreme Court has said that in Lovgren
22 versus Citizens First National Bank case.
23 Here, the issue that they're alleging
24 is the problem is the publication. So, the

1 torts, you know -- it really is whether it's
2 public disclosure or private facts. But
3 wrongful intrusion upon seclusion just doesn't
4 apply here at all.
5 THE COURT: Okay.
6 MR. GOODSNYDER: So, the focus -- they
7 avoid the disjunctive or and talk about only the
8 prying as opposed to the intrusion.
9 We have, as we talked about in Count 1,
10 the legislature and all the cases that have been
11 interpreted the Mental Health Act saying
12 essentially these are the most highly private
13 facts you could possibly have.
14 And then you have cause of action. It
15 even has a misdemeanor component of it. You
16 have attorney fee shifting. You have a damages
17 component of it. So, that sets the tone for
18 what this type of information is.
19 Again, the ABA Opinion talks about --
20 in a footnote, they cite a case, Turner versus
21 Commonwealth. While testimony in a court
22 proceeding may become a matter of public record,
23 even a court to nominate it as a court not of
24 record and may have been within the knowledge of

1 anyone at the preliminary hearing does not mean
2 that such testimony is generally known.
3 What you have here is highly, highly,
4 highly protected information that they only came
5 across because they represented him in this
6 case. They were not, like I said, they were not
7 part of the media, they were not observers in
8 the courtroom. They were his attorneys who
9 gained access to it as being of record in that
10 case.
11 So, they used that just akin to
12 someone, you know, snooping around your files or
13 eavesdropping on the conversation. It's the
14 intrusion on seclusion.
15 Here, they have this very, very highly
16 protected personal health information. They
17 only gained it in this fiduciary relationship
18 with their client. And then they take it and
19 they use it for self-aggrandizement.
20 And just one little topic on the
21 audience issue. I said there was a LinkedIn
22 position and a Facebook position. And on the
23 topic of audiences, for myself, I perceive
24 LinkedIn as addressing my colleagues who may

1 refer me business to what the nature of my
2 practice is; and Facebook is to reach, I would
3 say, potential clients, individual lay people.
4 So, in this case, you have intrusion,
5 you have very highly private information used
6 for no benefit to Mr. [redacted] in a very
7 offensive way. On top of it, you add a little
8 exaggeration and falsehoods and however you want
9 to say puffing and you add all that mixed
10 together and it's squarely within a wrongful
11 intrusion upon seclusion you have.
12 Thank you.
13 THE COURT: Yes.
14 MR. VAUGHT: I just want to mention,
15 it's a little -- he keeps referring to
16 falsehoods or inaccuracies.
17 So, on one hand he's saying that what
18 was reported wasn't right but that it's a
19 violation of the private confidential
20 information.
21 So, I mean, if the information is
22 incorrect, how is it improperly disclosing
23 private confidential information. I just quite
24 don't follow that.

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 42

1 But, you know, specific to this, the
2 tort is wrongful intrusion upon seclusion. They
3 said we only gained information because we
4 represented him. Well, then it's not wrongful
5 to get the information.
6 The tort is that you wrongfully
7 obtained the information. And so the fact that
8 they were his attorneys just negates the
9 possibility that it's a wrongful intrusion.
10 Again, they're trying to say that the
11 tort -- that the damage is the publication. But
12 as the Supreme Court says, this tort doesn't
13 involved publication being the damage.
14 THE COURT: All right. Go to Count 4,
15 please.
16 MR. VAUGHT: Count 4, a breach of
17 fiduciary duty which housed this on damages.
18 The damage element of the breach of fiduciary
19 duty. He alleges two types of damage.
20 The first is that he's been harmed from
21 gaining employment as an attorney. The second
22 is that the Court should impose a constructive
23 trust to take any fees that the law firm has
24 received on behalf of clients who came to them

Page 43

1 because of the press release in the newspapers.
2 First, we argue --
3 THE COURT: This actually is Count 5.
4 You're seeking disgorgement in Count 4.
5 MR. VAUGHT: Oh. Well, I think he --
6 THE COURT: Right. But he would like
7 to amend it to include it. I understand.
8 MR. VAUGHT: Okay. Yeah.
9 So, regarding the damages, this is I
10 think clearly judicial estoppel.
11 At trial, Mr. [redacted] testified that he
12 can't work as an attorney again. He testified
13 in the public setting, wanted the fact finder,
14 being the jury, to believe him. The jury did
15 believe him. They awarded him $700,000 in lost
16 future earnings.
17 Now, before this Court he wants to say,
18 but I can work as an attorney. But because of
19 this press release, I'm being harmed in that.
20 In one case, he says he can't work
21 again as a attorney. In this case, he's saying
22 he can work again. And in both cases he wants
23 damages for the amount of lost wages.
24 And so I think that is clearly judicial

Page 44

1 estoppel that bars him from coming into a second
2 tribunal. Even if he has, you know, become
3 better. And, you know, I think we'll all be
4 happy that that's great.
5 But he gave testimony at trial that he
6 cannot work. He was awarded by a jury for that.
7 He can't now come and say I'm damaged because
8 you're hurting my law practice.
9 Regarding the fees, you know, I think
10 there's numerous problems with that. First, it
11 has to be a proximally caused damage. There's
12 been nothing to suggest that he is somehow
13 damaged by fees that the law firm got.
14 Second of all, it gets into
15 attorney-client privilege. Why did certain
16 individuals come to the attorneys. I mean, are
17 we going to do fact-finding on all the firms'
18 clients to find out why they came. I think that
19 would be a great intrusion of attorney-client
20 privilege.
21 And furthermore, you're trying to
22 disgorge fees, which would be an improper fee
23 sharing under the rules of professional conduct.
24 We have rules whenever we share fees that we

Page 45

1 have to comply with and, you know, this is just
2 way outside of that.
3 So, because those are the damages
4 alleged and breach of fiduciary duty, we don't
5 think they state their claim.
6 THE COURT: Okay.
7 MR. GOODSNYDER: So, you know, everyone
8 is correct, and I appreciate that, you know, my
9 intentions were clear in terms of acknowledging
10 that counsel was correct in terms of
11 constructive trust be a remedy as a separate
12 cause of action. So, that is what I requested
13 as relief being just to amend that count.
14 We have the Doe versus Roe case which
15 is the divorce lawyer who plays on his
16 vulnerable client and induces her to have sex
17 with him. And in that case, it wasn't a legal
18 malpractice case. It was a breach of fiduciary
19 duty case. And they allowed emotional damages
20 and essentially punitive damages.
21 What we have here, again, is a breach
22 of fiduciary duty case where his attorneys,
23 having litigated the case for a year-plus,
24 having deposed him and the expert witnesses and

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 46

1 all the testimony at trial, they certainly knew
2 of his mental health vulnerabilities when they
3 issued this press release and public comment,
4 which, again, didn't serve his interest at all.
5 With regard to the position on the
6 false and overstated contentions that did him
7 some harm, Ms. Kaveny, again, you know, as we've
8 seen President Trump sort of think on his feet
9 and sort of takes on a life of its own, I
10 believe when she added facts about him being in
11 a halfway house and having no friends, I think
12 she was literally thinking off the cuff and she
13 added those facts that wasn't testimony that was
14 stated at trial.
15 So, you combine the truthful accuracy
16 of where and when he was treated and what he was
17 diagnosed with. That was truthful. Then you
18 add these other colorful puffing and you get,
19 you know, you expand on it, it's even more
20 damaging to anyone who links to these articles
21 and they, you know, take great pause of hiring
22 Mr. [redacted] even, you know, having personal
23 friendships with him over what's out there.
24 So, here we have permitted damages of

Page 47

1 disgorgement. We have permitted damages for
2 emotional distress under these circumstances.
3 You have potentially punitive damages down the
4 road if it comes to pass about intent.
5 Then, we have my request on the
6 constructive trust issue. Counsel talks about,
7 you know, to be frank, we're talking about
8 things that are inconsistent and a big component
9 of their contention of why getting into an
10 analysis of who hired Ms. Kaveny in the last two
11 years, whether they reviewed her website and
12 found this link to this claim.
13 Now, all of a sudden, as protecting
14 attorney-client privilege is sacrosanct and
15 we've got to -- we can't even do anything like
16 in any other context. All you have to do is in
17 camera review or redact the names and it's
18 easily solvable. I mean, people do this in
19 discovery all the time.
20 So, the question of maybe it's 10 or 15
21 clients that she has in the last two-plus years
22 that came through this website. We're not
23 talking about, you know, ten-million pages in
24 some product liability case with GM or something

Page 48

1 where you have some big burden.
2 Create a spreadsheet, redact the name
3 that you give to me in camera. And then maybe
4 you could come up with a quick -- maybe we could
5 come up with some stipulation. If the client
6 said -- if they didn't review the website before
7 retaining Ms. Kaveny, they're out. And if you
8 did, maybe a little farther inquiry into cause
9 and effect.
10 Easily solved. Again, that's a
11 question for down the road. Not a question for
12 today. We've alleged breach of fiduciary duty.
13 We've alleged proper damages subject to amending
14 the complaint.
15 On the estoppel issue, there's a key
16 phrase that sort of got passed under the rug.
17 You have your element -- in the Seymour case
18 that we both cite, they do a nice job of laying
19 out the elements of judicial estoppel.
20 But the key phrase is the Supreme Court
21 held, quote, judicial estoppel -- this is citing
22 the Seymour case.
23 Judicial estoppel like all estoppels
24 must be proved by clear and convincing evidence.

Page 49

1 We believe the evidentiary standard properly
2 counts for a degree of caution with which this
3 doctrine should be considered and applied.
4 The Supreme Court in Seymour held that
5 dispositive issues as to whether the plaintiffs
6 deliberating changed positions as a mean to gain
7 an unfair advantage and found there was no
8 evidence they had intended to deceive or mislead
9 the Court; therefore, they we rejected the
10 application of judicial estoppel to that case.
11 That was a bankruptcy case. And they
12 had it listed, I think a personal injury case,
13 and I think the dismissal was reversed.
14 Here, we have absolutely no intent to
15 deceive. Mr. [redacted] testified as to the extent
16 of his harm as of the date of trial. He
17 testified truthfully. And as counsel said, yes,
18 on a human being level, we're all pleased that
19 Mr. [redacted]s made the recovery that he's made.
20 But the key term in the estoppel is
21 when you take inconsistent factual positions as
22 of that -- inconsistent factual positions. I
23 would say where it would commonly come to pass
24 would be a person files a worker's comp case

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Page 50

1 saying that they were acting within the scope of
2 the employment when they slipped and fell on the
3 floor. They got a recovery. Then they filed a
4 personal injury case, like a premises case, and
5 say they were not acting on the side of the
6 scope of the employment.
7 Clearly, the snapshot in time is at the
8 point of the accident, what was their
9 relationship between the premises holder or the
10 employer.
11 Here, we had competing experts on both
12 sides of the case. Obviously, the defendant's
13 experts were pretty persuasive because we know
14 they had asked for more than $2 million in
15 future lost wages and they got $700,000.
16 So, there was competing testimony about
17 the extent and duration of Mr. [redacted]s future
18 harm. The experts testified to a reasonable
19 degree of medical certainty. Mr. [redacted] is
20 certainly not in a position. He certainly
21 couldn't have known, thank goodness, that he
22 would make the recovery that he would make and
23 that he would be able to return to practice.
24 But every time someone -- a potential

Page 51

1 client goes to hire him, the first thing that
2 they do in 2018 is type his name. His name is
3 not Jim Smith or Bob Jones. His name is [redacted]
4 [redacted] There's only one [redacted] [redacted]
5 attorney, and the first thing that comes up is
6 the press release from his own attorneys saying
7 that he'll never practice law again because
8 essentially he is so dysfunctional.
9 So, here, you certainly don't have an
10 intention to deceive. This is an equitable
11 argument. You require deliberating changing
12 positions, un unfair advantage. And it's,
13 again, proven by a clear and convincing evidence
14 standard.
15 This is a motion to dismiss with the
16 facts in the complaint taken as true, all
17 reasonable inferences taken in favor of the
18 nonmovant, Mr. [redacted] So, if some point down
19 road they want to re-raise this issue or
20 something, maybe, I don't know, there might be a
21 time that it could be proper, but it's certainly
22 not proper as a matter of law on a motion to
23 dismiss.
24 It would be inequitable to find that

Page 52

1 Mr. [redacted] cannot assert a damages claim for
2 inability to return to practice as a result of
3 the mass media out there.
4 THE COURT: Reply.
5 MR. VAUGHT: I think judicial estoppel
6 is clearly on point here. He testified he can't
7 work. He was awarded a jury verdict for lost
8 fewer earnings. Now, he's alleging he can work
9 and he's trying to sue for lost future earnings.
10 He has taken two inconsistent positions.
11 So, whether his intent is, you know,
12 pure, they're competing. I mean, they're just
13 conflicting. So, judicial estoppel applies.
14 As for the fees, you know, I disagree
15 that privilege isn't an issue. But at the same
16 time, he's never alleged how fees earned on
17 behalf of another client is a damage proximately
18 caused to him, to the plaintiff.
19 I mean, why it is that -- I mean, I
20 guess you would have to allege that, you know,
21 but for this press release they would have come
22 to me and I would have represented him and I
23 would have gotten the fees, but that's not the
24 case. He's not a medical malpractice attorney.

Page 53

1 So, there just isn't any causation for
2 how that is possibly a damage to him. So,
3 regardless to the attorney-client issues, that's
4 just not a damage that can be alleged.
5 THE COURT: Okay. Could you go to five
6 and six quickly.
7 MR. VAUGHT: So, with the constructive
8 trust, I think we can --
9 THE COURT: I think everyone
10 understands this. You need to amend your
11 pleading to seek that as a remedy should it keep
12 moving forward.
13 MR. GOODSNYDER: Agreed.
14 MR. VAUGHT: So, then the last one is
15 reckless infliction of emotional distress.
16 So, at the beginning, he said this
17 isn't a legal malpractice claim and it's not
18 captioned as that. But, in essence, when you
19 look at what is alleged and the arguments that
20 are raised, it sort of is.
21 But because the damages that they seek,
22 plaintiff seeks aren't available in malpractice,
23 they've sort of creatively rephrased them as now
24 intentional infliction of emotional.

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Page 54

1 So, case law is clear that you can't
2 receive emotional distress damages from lawyers
3 arising out of the provision of their legal
4 services and that the attorney-client
5 relationship does not impose a duty to improve a
6 client's mental health or emotional well-being.
7 That said, reckless infliction of
8 emotional distress involves conduct that is,
9 quote, so extreme to go beyond all possible
10 bounds of decency.
11 Here, obviously, the plaintiff is upset
12 now with the press release. I would note it was
13 more than a year and a half before anybody said
14 anything after it was issued. It wasn't like
15 there was an immediate, Why on earth is this in
16 the newspaper? It was much later that anybody
17 ever - plaintiff or counsel suggested that
18 there was a problem.
19 Furthermore, plaintiff himself filed a
20 pro se lawsuit prior to making any claim to the
21 attorneys that there was something improper
22 about issuing that, which had all of this
23 information that was part of the pleadings.
24 That is now a published appellate opinion that

Page 55

1 talks about essentially the same issues that
2 arise and come out of the press release.
3 And, you know, in this lawsuit, it's
4 been filed. It hasn't been filed under seal.
5 There was a newspaper article on this. And so,
6 in context of the information that has been
7 released, you know, whether they should have
8 done something regarding a press release or
9 speaking to the press, in context I don't see
10 how this could be so extreme as to go beyond all
11 possible bounds of decency.
12 There was a record-setting verdict on
13 behalf of plaintiff. They informed the public
14 about it. I mean, obviously, we understand that
15 plaintiff is upset about this now, but it wasn't
16 conduct that falls within what is necessary to
17 plead reckless infliction of emotional distress.
18 MR. GOODSNYDER: Initially, your Honor,
19 I take issue in both my briefs with the
20 reference to the Sweet litigation. I think that
21 if this were something that were going to be
22 addressed at trial, these things would all be
23 addressed in a motion in limine because they're
24 so offensive.

Page 56

1 You know, even referencing the fact
2 that the case was originally filed pro se basis,
3 the only purpose in referencing that is to
4 undercut the validity of the claim or to call
5 into question his motives. I mean, why else
6 include that in here. The whole reference to
7 the Sweet case really just is improper and
8 objectionable.
9 So, I've made my position on that
10 especially in the context of the 615 and the 619
11 going beyond this case and then adding all the
12 other facts. Just a little context for you.
13 The Kaveny firm continued to represent
14 Mr. [redacted] for an extensive period of time
15 doing post-trial motions addressing punitive
16 damages and some other counter arguments that
17 the defendants had raised and until it was
18 settled down the road.
19 We also have to keep in mind that,
20 essentially, you have the Chicago Daily Law
21 Bulletin and the Chicago Sun-Times which have to
22 have -- the Sun-Times has to have hundreds of
23 thousands of readers to their magazine. You
24 have the Law Bulletin clearly in the same circle

Page 57

1 that Mr. [redacted] practices in. You got that
2 being out there when he files this case and the
3 Sweet case.
4 The key in the tort of reckless
5 infliction of emotional distress is the
6 knowledge that the defendants had about his
7 vulnerability. Clearly, they knew of his
8 diagnosis treatment on prognosis that they
9 gained during their knowledge of him. We've
10 talked about in the Mental Health Act how highly
11 protected this information is.
12 So, that's the context for releasing
13 this. We've seen the other cases talking about,
14 you know, someone had a health procedure, or,
15 you know, some sort of diagnosis. That is a
16 highly protected kind of an item. You wouldn't
17 want that circulated among your coworkers, let
18 alone the mass media or all future clients who
19 have a computer and can type your name into the
20 computer.
21 So, we have all the key components. We
22 have the very highly protected information. We
23 have the defendants actual knowledge of his
24 vulnerability to emotional distress as they

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 58

1 argued at trial about, you know, his state of
2 mind, his health at the time.
3 So, I would say we have certainly,
4 especially in the context of the 615 motion,
5 which is just testing whether we have
6 sufficiently alleged a cause of action for
7 reckless infliction of emotional distress.
8 If they want to argue at trial counter
9 arguments to it or challenge the extent of his
10 emotional distress, those are things that are
11 not ripe for a 615 motion.
12 So, I would say we've certainly alleged
13 the elements, the facts to support a cause of
14 action for reckless infliction of emotional
15 distress under the final Count 6, I believe.
16 MR. VAUGHT: I disagree. They haven't
17 plead facts that are sufficient to plead
18 reckless infliction. I'll rest.
19 THE COURT: All right.
20 Just so that we're clear, all the
21 claims against Mr. Rashid are --
22 MR. GOODSNYDER: They were nonsuited by
23 agreement of the parties. Counsel and I --
24 counsel had requested -- Mr. Rashid had some

Page 59

1 financial -- he was buying a home or something
2 and he requested that this was a hindrance to
3 him. We came up with a stipulation between the
4 two of us that he wouldn't deny agency and we
5 would have the right to reinstatement if it
6 turned out during discovery that he had some
7 other greater role in it. So, that's how we
8 managed it.
9 THE COURT: I didn't have an order as
10 to that. So, I just wanted to be clear on that
11 aspect.
12 So, we'll begin with Count 1.
13 First of all, let's be clear as to this
14 is a motion to dismiss that was brought under
15 the highbred of 2619.1. So, certain counts are
16 being moved to dismiss based on 2615 and others
17 as to on the basis of 615 as well as 619.
18 As to the ones of 615, you're also
19 moving kind of in two different ways. 615 can
20 either be no cause of action can be stated, or
21 that there is a failure to plead a cause of
22 action.
23 So, let's go first with Count 1, where
24 in essence the defendant's argument is that

Page 60

1 because there's not this therapeutic
2 relationship between the defendant and their
3 former client, Mr. ████ the plaintiff in
4 this action, that, in fact, no cause of action
5 can be maintained under the Illinois Mental
6 Health and Disabilities Confidentiality Act.
7 The plaintiff has responded that they
8 weren't proceeding under that section of the act
9 that the defendants had referred to, but, in
10 fact, were saying that the redisclosure is the
11 basis.
12 The defendants have replied that, in
13 fact, by the statements being made in a public
14 trial that there has been a complete waiver
15 under 10(a)(1) of this act. And, therefore,
16 that no cause of action can be made because of
17 that.
18 It is the court's position that I think
19 that Kwig versus Walgreen is very clear as to
20 the need for therapeutic relationship. I think
21 it's also very clear given that this was
22 following a public trial and trials are public.
23 And for these reasons, Count 1 is
24 dismissed.

Page 61

1 As to Count 2, the defendant has
2 raised, too, that, first of all, these were
3 public facts and, therefore, should not go
4 forward. But, in addition, you've raised a 2619
5 statute of limitations argument as to why Count
6 2 titled by the plaintiff in their cause of
7 action, or in their complaint rather, that
8 defendants are liable for the wrongful public
9 disclosure of ████s private facts.
10 Again, this goes to where these
11 statements were disclosed, where the information
12 came from, and certainly that trials are public.
13 But more importantly here, it goes to
14 the issue of the publication, the date, the
15 statute of limitations.
16 And in looking at this, while you make
17 an interesting argument that there might be a
18 question of fact as to alternative audiences or
19 things of that, I don't think the law has
20 evolved away from the point that the publication
21 is when it is made for the first time.
22 And for that reason, the statute of
23 limitations here -- this article was published
24 on May 14th, 2015. The statute of limitations

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Page 62

1 ran May 14th of 2016. And for that reason,
2 Count 2 is out under the statute of limitations.
3 Additionally, I do believe that the
4 information that was disclosed was in the public
5 domain and I do believe that the element of news
6 worthiness was there in this because it is a
7 large verdict on the issue that was there.
8 Count 3, I applaud your creativity in
9 claiming that this is intrusion upon seclusion,
10 but it is not. That tort is clearly not one
11 that is designed to address these facts. And
12 for those reasons, you have failed to state the
13 cause of action and I don't believe on the facts
14 that were pled in this complaint that you can
15 plead around it at this point in time.
16 So, I'm not going to afford you an
17 opportunity to replead. So, Count 3 is out.
18 The motion to dismiss is granted as to Count 3.
19 As to Count 4, this is an allegation I
20 think that you can plead this cause of action.
21 The problem that we have is your damages claims.
22 As to the judicial estoppel argument
23 where a claim has been made in a prior
24 proceeding that your client could not work,

Page 63

1 could no longer work as an attorney, that's
2 going to be a problem. Unfortunately, that's
3 the type of damage that you may plead at this
4 point in time, but I fully expect will be after
5 some discovery, I may -- or in bringing
6 everything before the Court, you'll probably be
7 moving to strike that portion of damages.
8 The second element of damages where
9 you're trying to, in fact, put some sort of
10 constructive trust or something over the -- in
11 seeking the disgorgement of fees. Under 2615,
12 I'm going to strike that claim for damages.
13 That is simply -- it's untenable. It
14 would require in the -- even in the initial
15 outset, a trial within a trial. And it would be
16 going into matters that just -- violating the
17 attorney-client privilege as to subsequent
18 clients. It's just not a workable item of
19 damages, and I don't believe you can plead
20 around that.
21 So Count 4 can be repled. You can
22 plead what other damages you believe that your
23 client may be able to assert.
24 Count 5 we've already dealt with as to

Page 64

1 the item of constructive trust.
2 And Count 6 goes to whether or not
3 in -- while you have argued that this is not a
4 legal malpractice claim, I find it interesting
5 that as I went through the counts of your
6 complaint, I was finding allegations that
7 basically said this is malpractice. This is a
8 claim of malpractice, Paragraph 76, 77.
9 Several of these allegations in your
10 complaint just get us to the point where you're
11 basically pleading that there is some sort of
12 malpractice.
13 And for that reason, I think the law is
14 clear seeking damages for the intentional
15 infliction or reckless infliction of emotional
16 distress would not be available.
17 At this point Count 6 is dismissed out.
18 I will give an opportunity to replead. And if
19 you think that you can separate, because you
20 have realleged those counts that I've already
21 talked about that I said sounded like
22 malpractice as part of your claim in six.
23 So, for those reasons right there, you
24 pled yourself out of reckless infliction of

Page 65

1 emotional distress.
2 So just to recap so that counsels know
3 where we're going.
4 Count 1 is out. Count 2 is out based
5 on the statute of limitations.
6 Count 1 is out with prejudice because I
7 do not believe that the act applies to what's
8 heard here. Count 2 is out with prejudice based
9 on the statute of limitations.
10 Count 3 is out with prejudice because
11 this is not intrusion upon seclusion.
12 Count 4 you're given an opportunity to
13 replead the proper damages element, which is
14 necessary for a breach of fiduciary duty.
15 Count 5 we've already addressed. The
16 Constructive trust would be a remedy. If you
17 wish to try and replead that in there, but given
18 the indication that I've made as to your seeking
19 disgorgement fees, I don't see where the
20 constructive trust would actually be relevant at
21 this point.
22 And Count 6 is dismissed out with leave
23 to replead because right now the way you have
24 repeated and realleged certain allegations,

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FILED DATE: 7/18/2018 4:40 PM 2017L004610

Page 66

1 you've in essence tossed in a malpractice claim
2 and sought to get a cause of action that is not
3 permitted in a legal mal claim.
4 MR. GOODSNYDER: Judge, I appreciate
5 all the time that you took.
6 In terms of preserving our position on
7 the dismissed counts, if we could just have the
8 order reflect that if we file an amended
9 complaint that does not reallege the dismissed
10 counts that we're not pleading over or waiving
11 those.
12 I think, the concern that I have is,
13 because it's, you know, a voluminous complaint
14 and it has, you know, common facts that carry
15 through, I don't want to lose my right, you
16 know, needless to say, for the reasons I stated
17 in argument and in my briefs, I respectfully
18 disagree with the court's finding.
19 I don't want -- when I file an amended
20 complaint, I prefer the order to reflect that
21 should plaintiff elect to re-file the complaint
22 just alleging these two causes of action, there
23 is no expressed or implied waiver about the
24 propriety of the court's prior dismissals.

Page 67

1 THE COURT: Just for -- just because
2 of -- you're trying to ensure that you maintain
3 your ability to pursue any appeal to these.
4 MR. GOODSNYDER: Exactly.
5 THE COURT: I understand that.
6 And just looking at it from a more
7 practical aspect, when you want to respond to a
8 complaint, it's cleaner if you only have to
9 respond to those allegations and those counts
10 that are moving forward.
11 So, for that reason, I think the way I
12 would probably caption your complaint, and I
13 would not have an issue with it, and if counsel
14 wouldn't have an issue of it, is, Count 1
15 previously dismissed to the Court, plaintiff,
16 you can either replead or state that, you know,
17 rather than replead the dismissed count, just
18 maintain your ability to pursue it on appeal or
19 something along those lines so that you're not
20 looking at a 15-page complaint when you're
21 really only trying to address a four-page
22 complaint.
23 MR. VAUGHT: I would -- yeah, I mean,
24 if it's just even repled Count 1 just as a

Page 68

1 footnote, you know, previously dismissed, just
2 repled for appellate purposes, and then I don't
3 have to respond to it. That's not a problem.
4 MR. GOODSNYDER: And then maybe if we
5 could just a stipulation on the record that
6 should we elect to appeal the dismissal of those
7 dismissed with prejudice counts, when we file an
8 amended complaint, that defendants will not
9 raise the argument of, you know, that I waived
10 it for the context of an appeal.
11 Just so -- you know, like I said, I'm
12 just trying to be practical.
13 MR. VAUGHT: I guess, I mean, I think I
14 understand what you're saying. I guess I'm just
15 not in a position to waive a waiver argument
16 when I don't know what's going to happen.
17 So, you know, if you want to replead it
18 and put that, you know --
19 MR. GOODSNYDER: Okay.
20 MR. VAUGHT: I'll state this: If you
21 replead it and you have some sort of indication
22 it's been dismissed so I don't have to respond
23 to it, I acknowledge that preservation for
24 appellate purposes.

Page 69

1 MR. GOODSNYDER: All right. I
2 appreciate that.
3 THE COURT: Just so we're clear,
4 Counts 1, 2, 3 are dismissed with prejudice.
5 Counts 4 and 6 are dismissed with leave
6 to replead.
7 Count 5 we've all acknowledged it's
8 dismissed. It's kind of without prejudice,
9 without leave to replead.
10 MR. GOODSNYDER: I understand your
11 position, your Honor.
12 THE COURT: Okay. So, 28 days to
13 replead?
14 MR. GOODSNYDER: That's fine, Judge.
15 THE COURT: Okay. So, that would put
16 us at May 3rd.
17 MR. VAUGHT: How about if we say Count
18 5 is dismissed with prejudice, but leave to
19 replead as a remedy, if necessary.
20 THE COURT: That's fine.
21 MR. GOODSNYDER: That's fine.
22 THE WITNESS: You know what, Judge?
23 Can we do 35 days. I have an appellate brief
24 that's due in the interim.

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Page 70

1 THE COURT: Sure. Go to May 11th.
2 MR. GOODSNYDER: All right.
3 THE COURT: What I'm thinking I would
4 like to do is get a status a couple weeks after
5 that so you'll have an opportunity to review the
6 complaint and then you'll know best whether or
7 not you're -- how you're going to move forward,
8 if it's going to be an answer or motion, and we
9 can try and figure that out.
10 If I gave you the time to answer or
11 otherwise plead to the amended pleading, right
12 away we're going to get too far down the road.
13 MR. GOODSNYDER: I'm fine with a
14 mid-May or the week of the 21st or something
15 like that.
16 THE COURT: How about your choice,
17 counsels, 22nd, 23rd, or 24th?
18 MR. GOODSNYDER: 22nd, 9:30, Judge.
19 THE COURT: Tuesday, the 22nd.
20 Does that work for you? I don't want
21 to interfere with anyone who might be travelling
22 to get somebody back from school or anything
23 like that.
24 MR. GOODSNYDER: Got a graduation the

Page 71

1 next week, but that's it.
2 MR. VAUGHT: I got a two-and-a-half
3 year old.
4 THE COURT: Good for you. It goes
5 fast. All right. 9:30 on 5/22.
6 MR. GOODSNYDER: Thanks for all the
7 time you took to review the materials, Judge.
8 MR. VAUGHT: Thank you very much, your
9 Honor.
10 THE COURT: Sure. Okay.
11 (WHEREUPON, the proceedings
12 were concluded at 12:02 p.m.)
13 (WHEREUPON, which were all
14 proceedings had in
15 above-entitled cause on said
16 date and time.)
17
18
19
20
21
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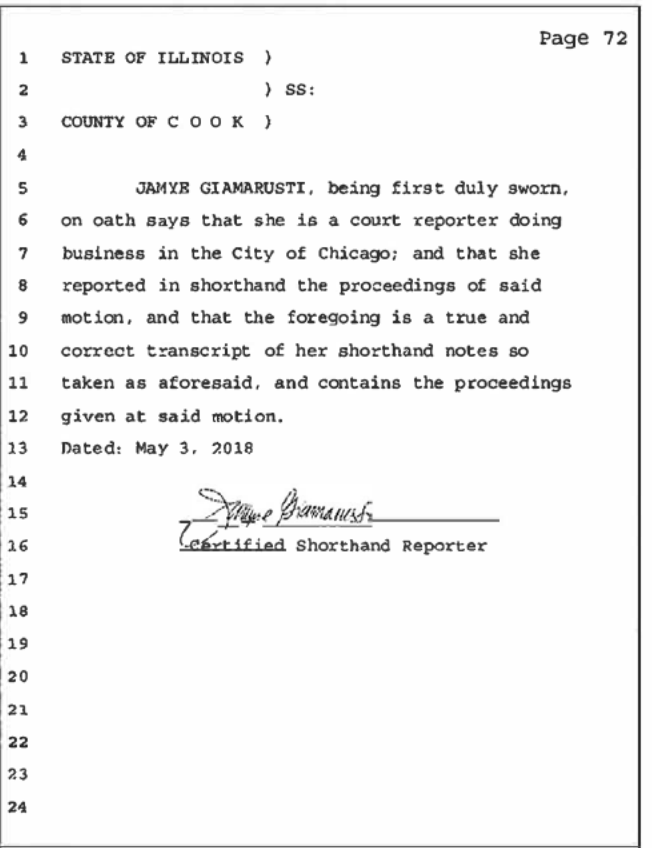
24

Page 72



1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4
5 JAMYE GIAMARUSTI, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 motion, and that the foregoing is a true and
10 correct transcript of her shorthand notes so
11 taken as aforesaid, and contains the proceedings
12 given at said motion.
13 Dated: May 3, 2018
14
15
16 Certified Shorthand Reporter
17
18
19
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

v.

Burke Wise Morrissey & Kaveny, LLC et al

No. 2017 L 004610

ORDER

This cause coming on Defendants' Section 2-619.1 motion to dismiss, the parties present, due notice given, the Court advised upon oral argument, it is ordered:

Regarding Defendants motion to dismiss it is granted as follows for the reasons stated on the record:

Counts I, II, and III are dismissed with prejudice;

Count V is dismissed with prejudice but Plaintiff may replead as a remedy;

Counts IV and VI are dismissed without prejudice; plaintiff granted leave to replead;

Plaintiff's Amended Complaint to be filed by May 11, 2018; Status on pleading set for May 22, 2018 at 9:30 am

Attorney No.: 90384

Name: Hinshaw

Atty. for: Δs

Address: 222 N. LaSalle St #300

City/State/Zip: Chi, IL 60601

Telephone: 312-704-3000

ENTERED:

Judge Margaret Ann Brennan

APR 05 2018

Circuit Court 1846

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

[redacted]	)	
	)	
Plaintiff,	)	No. 17 L 4610
	)	
v.	)	Commercial Calendar N
	)	
BURKE WISE MORRISSEY & KAVENY, LLC, DAVID J. RASHID, and ELIZABETH A. KAVENY,	)	Honorable Margaret Ann Brennan
	)	
Defendants.	)	

ORDER

This matter coming before the Court on Defendants Burke Wise Morrissey & Kaveny, LLC and Elizabeth Kaveny's Motion to Dismiss [redacted] W. [redacted] Amended Complaint pursuant to 735 ILCS 5/2-615, and [redacted] W. [redacted] Motion for Leave to File Plaintiff's Second Amended Complaint; the Court having considered the written submissions and being advised of the premises, finds:

STATEMENT OF FACTS

On August 6, 2007 Plaintiff attempted suicide while admitted as an in-patient at Advocate Good Samaritan Hospital ("Advocate") and sustained serious injuries which resulted in reduced cognitive ability. On July 15, 2009 Plaintiff filed a medical malpractice claim and was represented by the Defendants. At the trial Defendants argued that Plaintiff's injuries prevented him from being able to practice law. The jury found in favor of Plaintiff and a verdict was entered in the amount of $4,243,588.00, which was a record verdict for such a case. As a result, the case was covered in the Chicago Sun Times and Chicago Daily Law Bulletin. Defendants issued a press release, and included links to the press release and articles covering the case on their website. Plaintiff now argues that the statements made by Defendants to the press and public have caused him emotional damage, and have prevented him from reestablishing his legal practice. Plaintiff now files this Amended Complaint alleging breach of fiduciary duty (Count IV) and reckless infliction of emotional distress (Count V).

ARGUMENTS OF THE PARTIES

Defendants argue that Count I should be dismissed because, while Plaintiff is claiming to be repleading Count I in order to preserve it for appeal, it is not the same as the previously plead version of Count I. In essence Plaintiff has amended Count I without leave of court. Next, Defendants argue that Count IV should be dismissed because Plaintiff has failed to allege any

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recoverable damages. Defendants argue that Plaintiff's request for lost future earnings is barred by judicial estoppel because he was already awarded damages for that injury in the 2015 litigation. Additionally, Plaintiff may not recover emotional distress damages under a breach of fiduciary duty claim because the press release regarding the trial results was not particularly likely to result in the extreme emotional disturbance. Further, Plaintiff cannot recover punitive damages in this case, as it is a legal malpractice action. Additionally, Plaintiff cannot recover attorneys' fees, as there is no contractual or statutory provision which provides for them. Next, Defendants argue that Count V should be dismissed because emotional distress damages are not available in this case which is essentially a malpractice action. Further, the alleged misconduct of releasing a press release is not the type of action that qualifies as extreme and outrageous conduct. Additionally, Plaintiff's allegations regarding the high probability that Defendants' conduct would cause emotional distress in entirely conclusory. Finally, Plaintiff fails to include sufficient factual allegations demonstrating that he actually suffered extreme emotional distress.

In response, Plaintiff argues that when Defendants publicized Plaintiff's mental health information, which was obtained under a HIPAA Protective Order, they violated the Illinois Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"). Plaintiff then goes on to argue that the application of the Act is not limited only to those in a therapeutic relationship, and to hold otherwise would destroy the protections of the Act. Further, Plaintiff only waived his privilege over this information for the limited purpose of conducting the trial. Next, Plaintiff argues that Count IV should not be dismissed because Plaintiff did not act in bad faith or with the intent to deceive when he brought this lawsuit and the previous underlying lawsuit, therefore he cannot be judicially estopped from bringing these claims. Further, Plaintiff may collect for emotional distress and punitive damages, as this cause of action is not a malpractice claim. Finally, Plaintiff requests to withdraw Count V and file an amended pleading.

In reply Defendants argues that Plaintiff's arguments regarding Count I are essentially asking this Court to reconsider its decision on Defendants' previous motion to dismiss, and that it is procedurally improper to raise make this request in a response to a motion to dismiss. Further, even if the Court were to consider Plaintiff's request, it would be improper to grant the motion to reconsider because the HIPAA Protective Order was available evidence at the time the previous motion to dismiss was heard, and Plaintiff's arguments regarding *Quigg* add nothing to the arguments Plaintiff already made regarding *Quigg*. Next, Defendants argue that there is no intent or bad faith requirement that must be met in order for the courts to apply the doctrine of judicial estoppel, instead those are factors which the courts may consider. Further, emotional distress damages are unavailable, and nothing discussed by the Defendants in the press exceed the scope of what was discussed at trial. Defendants then argue that a claim may not seek only punitive damages, and because the underlying emotional damages and damages for lost wages are unavailable punitive damages are also unavailable. Next, Defendants argue that the Court should dismiss Count V with prejudice pursuant to 735 ILCS 5/2-1009(b). Finally, Defendants argue that the Court should not grant Plaintiff's request to file an amended pleading as he does not indicate how that pleading would cure the current deficiencies.

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In sur-reply Plaintiff argues that Plaintiff's violation of the HIPAA Protective Order constitutes a violation of the MHDDCA. Plaintiff then argues that punitive damages are appropriate in this case given the highly private nature of the information which was disclosed. Further, Plaintiff argues that the HIPPA Protective Order is not newly found information, as it was referenced in the initial complaint. Next, Plaintiff argues that the intent to deceive is necessary to apply judicial estoppel. Finally, Plaintiff argues that he should be allowed to file his Second Amended Complaint as it makes only minimal changes to Count I.

OPINION OF THE COURT

A Section 2-615 motion attacks the legal sufficiency of a complaint. *Beahringer v. Page*, 204 Ill.2d 363, 369 (2003); *Weather-man v. Gary Wheaton Bank of Fox Valley, N.A.*, 186 111.2d 472, 491 (1999), The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Beahringer*, 204 Ill. 2d at 369. When considering a Section 2-615 motion to dismiss, pleadings are to be liberally construed so as to do justice between the opposing parties. *Abbott v. Amoco Oil Co.*,249 Ill. App, 3d 774, 778 (2d Dist. 1993). All well pleaded facts within the four corners of the complaint are regarded as admitted and true, together with all reasonable inferences drawn in the light most favorable to the plaintiffs. *Id.* Illinois is a fact-pleading jurisdiction. *See, e.g., Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006); *Weiss v. Waterhouse Securities, Inc.*, 208 Ill.2d 439, 451 (2004). While the plaintiff is not required to set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368-69 (2004); *Chandler v. Illinois Central R.R. Co.*, 207 Ill.2d 331, 348 (2003); *Vernon v. Schuster,* 179 Ill.2d 338, 344 (1997). Because Illinois is a fact-pleading jurisdiction, the plaintiffs must allege facts, not mere conclusions, to establish their claim as a viable cause of action. See *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Iseberg v. Gross*, 227 Ill. 2d 78, 86 (2007).

Count I

In his Sur-Reply, Plaintiff seems to suggest that because Defendants' arguments for dismissing Count I are procedural in nature they are somehow not worthy of consideration. The Court vehemently disagrees with this sentiment. The rules of procedure are necessary for the efficient execution of the Court's duties. To flout them disrespects the Court's time and makes this task more difficult. By failing to comply with proper procedure, Plaintiff has transformed a routine motion to dismiss into a three-pronged motion to dismiss, for leave to file an amended complaint and to reconsider. Plaintiff has presented his request as leave to file an amended Count I, but in essence what he is actually doing is asking this Court to reconsider its previous dismissal of Count I with prejudice. However, Plaintiff's Motion for Leave to File a Second Amended Complaint, Response, and Sur-Reply are not appropriate places to make this request. Accordingly, Count I is stricken without leave to replead.

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Count IV

After considering Defendants' previous Motion to Dismiss, the Court determined that Plaintiff was estopped from seeking to recover damages for his lost future earnings.[1] According to the Illinois Supreme Court the following procedure should be followed to determine whether or not to apply the doctrine of Judicial Estoppel:

> "We believe the procedural and analytical sequence should proceed as follows. First, the trial court must determine whether the prerequisites for application of judicial estoppel are met. In this respect, the party to be estopped must have (1) taken two positions, (2) that are factually inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to accept the truth of the facts alleged, and (5) have succeeded in the first proceeding and received some benefit from it. *Runge*, 234 Ill. 2d at 132; *Jones*, 223 Ill. 2d at 598; *Caballero*, 206 Ill. 2d at 80. We note, even if all factors are found, intent to deceive or mislead is not necessarily present, as inadvertence or mistake may account for positions taken and facts asserted. Second, if all prerequisites have been established, the trial court must determine whether to apply judicial estoppel—an action requiring the exercise of discretion. Multiple factors may inform the court's decision, among them the significance or impact of the party's action in the first proceeding, and, as noted, whether there was an intent to deceive or mislead, as opposed to the prior position having been the result of inadvertence or mistake."
>
> *Seymour v. Collins*, 2015 IL 118432, ¶ 47, 39 N.E.3d 961

Accordingly, if the prerequisite elements are met, the Court may, at its discretion, apply the doctrine of judicial estoppel. The intent to deceive is merely one of the factors the Court should consider when exercising its discretion and not a required element. Accordingly, it was within this Court's discretion to apply the doctrine of judicial estoppel to Plaintiff's request for damages for lost future earnings. Accordingly, Plaintiff's request for damages for lost future earnings is hereby stricken.

Plaintiff also seeks to recover damages for the emotional distress cause by Defendants' disclosure of his medical information. "It is only when the attorney has reason to know that a breach of his fiduciary duty is likely to cause emotional distress, for reasons other than pecuniary loss, that damages will be given as compensation for mental suffering." *Doe v. Roe*, 289 Ill. App. 3d 116, 130, 681 N.E.2d 640, 650 (1st Dist. 1997). On a Section 2-615 Motion the Court must make all reasonable inferences in the light most favorable to the non-movant. It is a reasonable inference that Defendants would have had reason to know that unnecessary publication of the Plaintiff's mental health information could have resulted in increased emotional distress. Accordingly, the alleged damages for emotional distress are sufficiently plead.

---

[1] While a decision had already been made on this point the Court will consider Plaintiff's arguments on the matter.

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Additionally, Plaintiff seeks recovery for punitive damages. "A fiduciary relationship may arise as a matter of law by virtue of the parties' relationship, *e.g.*, attorney-client, or it may arise as a result of the special circumstances of the parties' relationship where one places trust in another so that the latter gains superiority and influence over the former." *State Security Insurance Co. v. Frank B. Hall & Co.*, 258 Ill. App. 3d 588, 595, 630 N.E.2d 940, 945 (1st Dist. 1994). In this instance, alleged breach of fiduciary duty arises out of Defendants' obligations to the Plaintiff as their client. Therefore, the gravamen of the claim is one of legal malpractice. "In all cases, whether in tort, contract or otherwise, in which the plaintiff seeks damages by reason of legal, medical, hospital, or other healing art malpractice, no punitive, exemplary, vindictive or aggravated damages shall be allowed." 735 ILCS 5/2-1115. Accordingly, punitive damages are not recoverable in this action, and Plaintiff's request for punitive damages is stricken.

Finally, Plaintiff seeks attorneys' fees as part of his punitive damages. "Illinois generally follows the 'American Rule': absent statutory authority or a contractual agreement between the parties, each party to litigation must bear its own attorney fees and costs, and may not recover those fees and costs from an adversary." *Morris B. Chapman & Associates v. Kitzman*, 193 Ill. 2d 560, 572, 739 N.E.2d 1263, 1271 (2000). Plaintiff has not alleged that the parties had any agreement which provides for recovery of attorneys' fees, nor does he point to any statute. Accordingly, Plaintiff's request for attorneys' fees is stricken.

Count V

To state a cause of action for reckless infliction of emotional distress, "[t]he plaintiff must plead facts which indicate: (1) that the defendant's conduct was extreme and outrageous; (2) that the defendant knew that there was a high probability that his conduct would cause severe emotional distress; and (3) that the conduct in fact caused severe emotional distress." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 20, 607 N.E.2d 201, 211 (1992). The alleged misconduct in this action (*e.g.* creating a press release, making statements to the press, and posting links to one's website) are all fairly typical actions that attorneys and law firms take after winning a big case. While the conduct may have been wrongful (that is yet to be determined), it does not rise to the level of extreme and outrageous. Accordingly, pursuant to 735 ILCS 5/2-1009(b), the Court grants Defendants' Motion to Dismiss Count V with prejudice.

Motion for Leave to File Plaintiff's Second Amended Complaint

Upon review the Court finds that the proposed Second Amended Complaint does not cure any of the defects in Plaintiff's breach of fiduciary duty claim, nor is it appropriate to replead Plaintiff's MHDDCA claim which was previously dismissed with prejudice. Accordingly, Plaintiff's Motion for Leave to File Plaintiff's Second Amended Complaint is denied.

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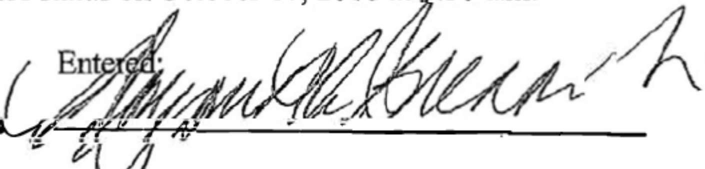
Wherefore, it is hereby

ORDERED:

1. Defendants' Motion to Dismiss pursuant to 735 ILCS 5/2-615 is GRANTED in part.
2. Count I is STRICKEN without leave to replead. 4271
3. The requests for damages for lost future earnings, punitive damages, and attorneys' fees are STRICKEN.
4. Count VI is DISMISSED with prejudice. 4271 5292
5. Plaintiff's Motion for Leave to File Plaintiff's Second Amended Complaint is DENIED.
6. This matter is set for status on October 17, 2018 at 9:30 a.m. 4619



Entered:

Judge Margaret A. Brennan
OCT. 04 2018
Circuit Court - 1846

Judge Margaret Ann Brennan 1846
Circuit Court of Cook County, Illinois
County Department, Law Division

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

[redacted] Plaintiff,	)
Vs.	)
	) Case No. 17 L 004610
BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, DAVID J. RASHID, and ELIZABETH A. KAVENY, Individually, and as agents, servants And employees of BURKE WISE MORRISSEY & KAVENY, LLC., An Illinois Professional Limited Liability Company, jointly and severally	) Presiding Judge: Hon. Margaret A. Brennar
	) Calendar: N
Defendants.	)

ORDER

THIS MATTER coming before the court on **PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S APRIL 5, 2018, ORDER GRANTING DEFENDANTS' 2-619.1 MOTION TO DISMISS COUNT I (MHDDCA) AND OCTOBER 4, 2018, ORDER GRANTING DEFENDANTS' 2-615 MOTION TO DISMISS COUNT I AS AMENDED,** due notice given, the court fully advised in the premise,

IT IS HEREBY ORDERED:

1. Plaintiff's motion is denied. 5231
2. The February 11, 2021 status date is stricken. 4304
3. Further case management conference will take place (via Zoom) on November 5, 2020 at 11:00 a.m. at which point the court will consider setting a trial date and other matters which may be before the court.

4806
4619

Judge Margaret A. Brennan
AUG 13 2020
Circuit Court - 1846

Entered:

Judge Margaret A. Brennan

Document Prepared by:
Thomas M. Paris, Esq.
55 West Monroe Street, Suite 3330
Chicago, Illinois 60603
(312) 759-1600
tp@tomparislaw.com
#30118

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

[REDACTED])
)
Plaintiff,)
)
v.) Case No. 2017 L 004610
)
BURKE WISE MORRISSEY & KAVENY, LLC,)
an Illinois Professional Limited Liability)
Company, DAVID J. RASHID, and)
ELIZABETH A. KAVENY, individually, and)
as agents, servants, and employees of BURKE)
WISE MORRISSEY & KAVENY, LLC,)
an Illinois Professional Limited Liability)
Company, jointly and severally,)
)
Defendants.)
)

ORDER

This matter before the court on Plaintiff's Motion to Voluntarily Dismiss Count IV for breach of fiduciary duty, without prejudice, the court being fully advised in the premise,

It is hereby ordered:

4040

1. Count IV for fiduciary duty is voluntarily dismissed without prejudice with leave to refile consistent with *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008). All prior rulings of the court are now final and appealable, and no matter remains before the court.

9268

ENTERED:

Judge Margaret A. Brennan
SEP 09 2021
Circuit Court - 1846

Judge,
DATE:

Prepared by:
Thomas M. Paris #30118
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Chicago, Illinois 60603
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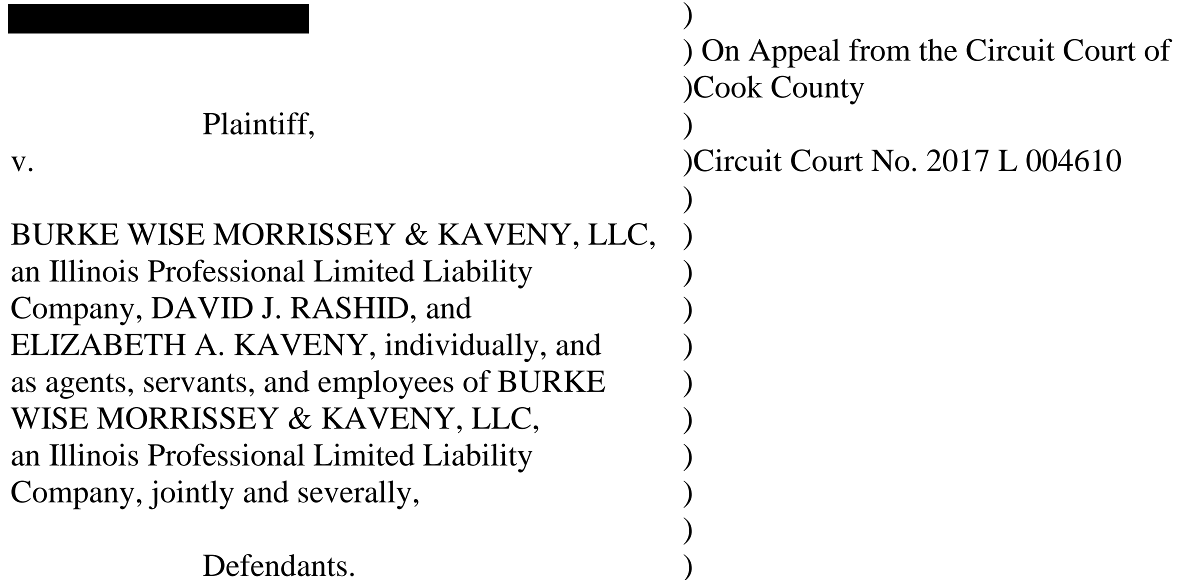
FILED
10/7/2021 2:15 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2017L004610
15122958

FILED DATE: 10/7/2021 2:15 PM 2017L004610

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

FROM THE CIRCUIT COURT OF COOK COUNTY



	)
	) On Appeal from the Circuit Court of
	)Cook County
Plaintiff,	)
v.	)Circuit Court No. 2017 L 004610
	)
BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, DAVID J. RASHID, and ELIZABETH A. KAVENY, individually, and as agents, servants, and employees of BURKE WISE MORRISSEY & KAVENY, LLC, an Illinois Professional Limited Liability Company, jointly and severally,	)
	)
Defendants.	)

NOTICE OF APPEAL

Adam R. Vaught (avaught@hinshawlaw.com)
Hinshaw & Culbertson LLP
151 North Franklin Street, Suite 2500
Chicago, IL 60606

PLEASE TAKE NOTICE THAT Plaintiff-Appellant, hereby appeals the following orders:

1. April 5, 2018, granting Defendants' Motion to Dismiss Counts I, II, III and V with prejudice.
2. October 4, 2018, denying Plaintiff's Motion to Reconsider and dismissing Count VI of Plaintiff's complaint with prejudice.
3. August 13, 2020, Denying Plaintiff's Motion to Reconsider.
4. March 5, 2021, Denying Plaintiff's Motion for Leave to File an Amended Complaint with negligence count and reinstate the remedy of disgorgement of fees and denying Plaintiff's Motion to allow a jury to resolve the issue of damages, or in the alternative, for the court to impanel and advisory jury.
5. July 23, 2021, denying Plaintiff's Motion to Reconsider the Court's April 5, 2018, and October 4, 2018, orders and leave to add a count to the pending complaint.

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All orders were made final and appealable by virtue of Plaintiff voluntarily dismissing the remaining pending count on September 9, 2021.

By this appeal, Plaintiff-Appellant, [redacted] will ask the Appellate Court to reverse the orders of April 4, 2018, October 4, 2018, August 13, 2020, and March 5, 2021, and remand this cause with directions to reinstate all counts of the complaint for trial on the merits as to all claims, or for such other or further relief as the Appellate Court may deem proper.

Respectfully Submitted,

By: /s/ *Thomas M. Paris*

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FILED DATE: 10/7/2021 2:15 PM 2017L004610

CERTIFICATE & AFFIDAVIT OF DELIVERY (PERSONALLY OR BY MAIL)

The undersigned hereby certifies under penalties of perjury as approved by law pursuant to 735 ILCS 5/1-109, that the above Notice and any attached pleadings were [ ] personally delivered, [ ] faxed, [ ] placed in the U.S. mail [X] via electronic mail at 55 W. Monroe Street, Chicago, Illinois 60603 with postage prepaid and directed to the parties at the address(es) set forth above before 5:00 p.m. on October 7, 2021.

/s/ Thomas M. Paris

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2022 IL App (1st) 211283

FIFTH DIVISION
October 7, 2022

No. 1-21-1283

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN DOE,	)	Appeal from the Circuit Court of,
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
BURKE WISE MORRISSEY & KAVENY, LLC,	)	
an Illinois Professional Liability Company; and	)	
DAVID J. RASHID and ELIZABETH A.	)	
KAVENY, Individually, and as Agents, Servants,	)	
and Employees of Burke Wise Morrissey	)	No. 17 L 004610
& Kaveny, LLC, an Illinois Professional Limited	)	
Liability Company, Jointly and Severally,	)	
	)	
Defendants	)	
	)	
(Burke Wise Morrissey & Kaveny, LLC, an Illinois	)	
Professional Limited Liability Company, and	)	Hon. Margaret A. Brennan,
Elizabeth A. Kaveny, Defendants-Appellees).	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court, with opinion.
Justices Cunningham and Delort concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, known for the purposes of this appeal as John Doe,[1] appeals from an order of the circuit court that, pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-

[1]This court previously granted plaintiff's request to use a fictitious name.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

615 (West 2014)), dismissed his claim that defendants, Burke Wise Morrissey & Kaveny, LLC, and Elizabeth A. Kaveny, violated the Mental Health and Developmental Disabilities Confidentiality Act (Act) (740 ILCS 110/1 *et seq.* (West 2014)). On appeal, Doe contends that the Act authorizes his cause of action. We reverse and remand.

¶ 2 I. BACKGROUND

¶ 3 Defendants represented Doe in a medical malpractice action against a hospital and other medical staff. The subject incident was a suicide attempt that Doe made after he was admitted to the emergency room. In that litigation, the hospital sought a qualified protective order under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d (2012)) to gain access to Doe's protected health information. The hospital also requested a subpoena under the Act. At the end of the ensuing jury trial, Doe was awarded over $4 million. Subsequently, in May 2015, defendants issued a press release related to the medical malpractice trial. The press release described Doe's diagnoses, the suicide attempt at the hospital that led to his injuries, and the effects of his injuries. Kaveny also commented on the case and Doe's history for an article in the Chicago Daily Law Bulletin (Law Bulletin). The press release and article included Doe's real name. Both items were attached to the complaint and reviewed on appeal.

¶ 4 On May 5, 2017, Doe filed a multi-count complaint against defendants, with count I asserting that defendants violated the Act by wrongly disclosing confidential information about Doe's mental health and diagnoses. According to the complaint, Kaveny did not have Doe's informed consent to disclose the confidential information that was contained in the Law Bulletin article, which later appeared in other publications as well. Doe asserted that, as a proximate result of the wrongful disclosure, defendants were liable for the damages he sustained. The other counts of the complaint are not at issue in this appeal.

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¶ 5 Defendants moved to dismiss count I of Doe's complaint under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). Defendants asserted, in part, that the Act did not apply to them because they did not have a therapeutic relationship with Doe. Further, the information disclosed in the press release was public because Doe testified about the information at the medical malpractice trial. Doe also waived the confidentiality of his records by putting his medical condition at issue in the medical malpractice litigation.

¶ 6 In response, Doe stated that the Act prohibited the release of any information that would identify someone as a recipient of mental health services, which was the information disclosed in the press release. Doe asserted that defendants' redisclosure of his protected mental health information violated sections 5(d) and 10(a)(8) of the Act (740 ILCS 110/5(d), 10(a)(8) (West 2014)).

¶ 7 After a hearing on April 5, 2018, the court dismissed count I with prejudice. The court stated that a therapeutic relationship was required for the Act to apply. The court also stated that "this was following a public trial and trials are public."

¶ 8 On May 15, 2018, Doe filed an amended complaint that included new allegations for his claim under the Act. The court struck the claim without leave to replead.

¶ 9 On April 13, 2020, Doe filed a motion to reconsider the orders that dismissed count I and struck the amended claim. Doe asserted, in part, that defendants violated the HIPAA order that was entered in the medical malpractice case, which in turn violated the Act. Doe also noted that the Act was amended in 2015 to clarify that a therapeutic relationship is not an element of a cause of action. After a hearing on August 13, 2020, the court denied the motion to reconsider and stated that the claim under the Act was still dismissed with prejudice.

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¶ 10 On August 31, 2021, Doe filed a motion to voluntarily dismiss a remaining count in his complaint. All of the other counts had previously been dismissed with prejudice. On September 9, 2021, the court dismissed the remaining count without prejudice, and Doe appealed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, Doe contends that the plain language of the Act authorizes his cause of action. Doe states that the information that defendants disclosed was protected by the Act because it was not only received from Doe himself but was obtained from his medical records and the depositions of his treating physicians. Doe argues that defendants were allowed to use his mental health records in the medical malpractice litigation because his mental health was at issue, but the Act prohibited the defendants from redisclosing what they knew except in connection with that litigation. Doe further asserts that defendants violated the Act by disclosing information protected by HIPAA. Doe also states that the amended version of the Act makes clear that a therapeutic relationship is not needed to establish liability.

¶ 13 Doe's claim was dismissed with prejudice under section 2-615 of the Code. The question on review from that dismissal "is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). "At this pleading stage, a plaintiff is not required to prove his case and need only allege sufficient facts to state all elements of the cause of action." *Nelson v. Quarles & Brady, LLP*, 2013 IL App (1st) 123122, ¶ 27. The only matters to be considered are the pleading's allegations themselves (*Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 475 (1991)), but exhibits attached to the complaint are part of the pleading for a motion to dismiss (*Thompson v. N.J.*, 2016 IL App (1st)

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142918, ¶ 28). A claim should not be dismissed under section 2-615 unless no set of facts can be proved that would entitle the plaintiff to recover. *Napleton*, 229 Ill. 2d at 305.

¶ 14 One of the main purposes of the Act is to protect the confidentiality of records and communications of people who receive mental health services. *House v. SwedishAmerican Hospital*, 206 Ill. App. 3d 437, 442 (1990). The Act generally prohibits the disclosure of such information (*Laurent v. Brelji*, 74 Ill. App. 3d 214, 216 (1979)), stating that "[a]ll records and communications shall be confidential and shall not be disclosed except as provided in this Act." 740 ILCS 110/3(a) (West 2014). A record is "any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided." *Id.* § 2. A therapist is "a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services." *Id.* And a confidential communication or communication is "any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient." *Id.* The definition of "communication" includes information indicating that a person is receiving or has received mental health or developmental disabilities services. *Id.* "Any person aggrieved" by a violation of the Act "may sue for damages, an injunction, or other appropriate relief." *Id.* § 15. Through the Act, "[t]he General Assembly has made a strong statement about the importance of keeping mental health records confidential." *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 599 (1998).

¶ 15 Doe's complaint sufficiently alleged a cause of action under the Act. Taking all reasonable inferences that can be drawn from the alleged facts as true, the information that defendants disclosed in the press release and Law Bulletin were records and communications under the Act.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

As Doe's attorneys in the medical malpractice case, defendants would have received information about Doe's condition and mental health history. Defendants' statements in the press release and Law Bulletin, at a minimum, revealed that Doe received mental health services at a particular hospital. The statements also noted Doe's diagnosis when he arrived at the hospital, summarized what occurred during his hospital stay, and described his condition when he left the hospital. That defendants themselves were not providing Doe with mental health services does not relieve them of potential liability. Illinois has permitted a claim under the Act even where the defendant was not a provider of mental health services. See *Johnson v. Lincoln Christian College*, 150 Ill. App. 3d 733, 743-44 (1986) (a student sufficiently alleged a cause of action under the Act against his college, which allegedly redisclosed information learned from the student's therapist to faculty members, students, and members of the student's family).

¶ 16 Further, to the extent that Doe consented to disclosing his mental health information to defendants for the medical malpractice litigation, defendants' subsequent press release and statements in the Law Bulletin fall under section 5(d) of the Act, which states that "[n]o person or agency to whom any information is disclosed under this Section may redisclose such information unless the person who consented to the disclosure specifically consents to such redisclosure." 740 ILCS 110/5(d) (West 2014). The medical malpractice trial invoked an exception to the Act's prohibition on disclosure found in section 10(a)(1), which provides that records and communications may be disclosed "in a civil, criminal or administrative proceeding" where the recipient introduces his mental condition or any aspect of the services he received for that condition as an element of his claim or defense. *Id.* § 10(a)(1). Section 10(a)(1) authorized disclosing Doe's records and communications for the medical practice litigation, but defendants' alleged subsequent

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

broadcast of Doe's mental health history appears to be beyond the bounds of that proceeding. Doe sufficiently alleged that defendants violated the Act.

¶ 17 Defendants try to avoid the Act's sweep by asserting that Doe waived confidentiality by testifying in detail at the medical malpractice trial. In support, defendants rely on *Novak v. Rathnam*, 106 Ill. 2d 478, 484 (1985), where a psychiatrist's testimony on behalf of a defendant's insanity defense at a criminal trial waived the confidentiality of that information for a subsequent proceeding. In *Novak*, however, there were no limits placed on the psychiatrist's testimony in the underlying criminal trial. Here, Doe's complaint states that the information shared at the medical malpractice trial was subject to a qualified protective order under HIPAA. Generally, such orders restrict how health information is used, prohibiting " 'the parties from using or disclosing [the information] for any purpose other than the litigation or proceeding for which such information was requested,' " and requiring " 'the return to the covered entity or destruction of [the information] *** at the end of the litigation or proceeding.' " *Haage v. Zavala*, 2020 IL App (2d) 190499, ¶ 9 (quoting 45 C.F.R. § 164.512(e)(1)(v)(A), (B) (2018)). We make no comment about whether defendants violated HIPAA and whether such a violation would also violate the Act. For the purpose of this appeal, the complaint sufficiently alleged that the information shared at the medical malpractice trial had restrictions on its use, such that Doe did not waive the Act's protections by testifying.

¶ 18 Defendants rely on *Quigg v. Walgreen Co.*, 388 Ill. App. 3d 696 (2009), to defeat Doe's claim. However, the disclosure alleged here is far different from the disclosure that occurred in that case. In *Quigg*, a pharmacy that disclosed a woman's prescription profile to her ex-husband could not be held liable under the Act because the pharmacy was not in a therapeutic relationship with the woman. *Id.* at 703. The court stated that only a therapist or agency in a therapeutic

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

relationship with the recipient of mental health services could be held liable under the Act. *Id;* see also *Suarez v. Pierard*, 278 Ill. App. 3d 767, 770 (1996) (pharmacist who disclosed the plaintiff's confidential information could not be sued under the Act where the interaction between the pharmacist and the plaintiff was a "routine transaction" and did not constitute therapy under the Act). As opposed to a pharmacy-customer interaction, Doe's records and communications were created in the course of addressing Doe's mental health in the presence of physicians and nurses, who were "therapists" under the Act. See 740 ILCS 110/2 (West 2014) ("therapist" includes a psychiatrist, physician, or nurse providing mental health or developmental disabilities services).

¶ 19 Moreover, *Quigg*'s finding that only therapists or agencies engaging in therapeutic relationships can be liable under the Act is unsupported by authority. For that proposition, *Quigg* cited a sentence from *Martino v. Family Service Agency of Adams County*, 112 Ill. App. 3d 593, 599-600 (1982), which noted that, according to a 1976 report, the Act was "intended to include all those persons entering into a therapeutic relationship with clients." From there, *Quigg* made the leap that the Act only included those persons entering into a therapeutic relationship with clients and only those persons could be liable. 388 Ill. App. 3d at 702-03. *Martino* did not state or hold that only therapists and those engaging in therapeutic relationships can be liable under the Act. *Quigg*'s limitation of liability does not stand on solid authority. Further, the plain language of the Act authorizes Doe's action against defendants here, where defendants disclosed Doe's records and communications and no exception has been shown to apply. See *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶ 17 (the most reliable indicator of legislative intent is the statute's language itself, given its plain and ordinary meaning).

¶ 20 The parties disagree about the effect of a 2015 amendment to the Act, which added the provision that "records and communications made or created in the course of providing mental

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship." Pub. Act 99-28 (eff. Jan. 1, 2016) (amending 740 ILCS 110/3). Defendants' statements in the press release and Law Bulletin were made in May 2015, before the amendment's effective date. We do not need to resolve whether the amendment applies to defendants' statements because, as discussed above, the records and communications that defendants disclosed were made to therapists as defined by section 2 of the Act as it existed in 2015. See 740 ILCS 110/2 (West 2014). The information that defendants allegedly disclosed was protected by the prior version of the Act, and the amendment does not change our result.

¶ 21 III. CONCLUSION

¶ 22 Doe sufficiently alleged a claim against defendants under the Act in count I of his complaint. The judgment of the circuit court is reversed, and the matter is remanded for further proceedings.

¶ 23 Reversed and remanded.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Doe v. Burke Wise Morrissey & Kaveny, LLC, **2022 IL App (1st) 211283**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 17-L-004610; the Hon. Margaret A. Brennan, Judge, presiding.
Attorneys for Appellant:	Thomas M. Paris, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly A. Jansen and Thomas P. McGarry, of Hinshaw & Culbertson LLP, of Chicago, for appellees.

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

TABLE OF CONTENTS TO THE RECORD ON APPEAL

Common Law Record

	Common Law Record—Table of Contents	C2
	Docket	C8
May 5, 2017	Civil Action Cover Sheet	C26
May 5, 2017	Complaint at Law	C27
May 5, 2017	Affidavit of Damages in Compliance with Illinois Supreme Court Rule 222(b)	C57
May 5, 2017	Jury Demand	C58
	Exh. 1 March 11, 2014 order granting leave to Burke Wise Morrisey & Kaveny to enter substitute appearance in medical malpractice action	C59
	Exh. 2 May 8, 2015 press release on Burke Wise Morrisey & Kaveny website	C60
	Exh. 3 May 14, 2015 Article in the Chicago Daily Law Bulletin	C62
	Exh. 4 Chicago Sun Times Article	C64
	Exh. 5 Excerpts from Burke Wise Morrisey & Kaveny website	
	“Our History” page of Burke Wise Morrisey & Kaveny website	C65
	“Our Attorneys” page of Burke Wise Morrisey & Kaveny website	C66
	Elizabeth A. Kaveny profile on Burke Wise Morrisey & Kaveny website	C68

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

		May 8, 2015 press release on Burke Wise Morrisey & Kaveny website	C71
		David J. Rashid profile on Burke Wise Morrisey & Kaveny website	C73
		"News" page on Burke Wise Morrisey & Kaveny website	C75
	Exh. 6	December 23, 2016 email from Christopher Goodsnyder to Elizabeth A Kaveny	C79
	Exh. 7	February 16, 2017 Order in medical malpractice action	C81
May 5, 2017	Summons directed to Burke Wise Morrissey & Kaveny, LLC		C82
May 5, 2017	Summons directed to David J. Rashid		C83
May 5, 2017	Summons directed to Elizabeth A. Kaveny		C84
May 10, 2017	Affidavit of Service as to Burke Wise Morrissey & Kaveny, LLC		C85
May 10, 2017	Affidavit of Service as to David J. Rashid		C87
May 10, 2017	Affidavit of Service as to Elizabeth A. Kaveny		C88
June 2, 2017	Appearance for Defendants by Hinshaw & Culbertson, LLP		C89
June 2, 2017	Notice of Filing of Appearance		C91
June 9, 2017	Notice of Routine Motion		C92
June 9, 2017	Motion for Extension of Time to Answer or Otherwise Plead		C93
June 9, 2017	Agreed Order		C95
July 17, 2017	Defendants' Section 2–619.1 Motion to Dismiss		C96

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

	Exh. A	Complaint at Law (with Exhibits)	C109
	Exh. B	Transcript of plaintiff's trial testimony in underlying medical malpractice action	C164
	Exh. C	Order entering judgment on the verdict in underlying medical malpractice action	C218
		Verdict form in underlying medical malpractice action	C219
	Exh. D	May 8, 2015 press release on Burke Wise Morrisey & Kaveny website	C221
	Exh. E	May 14, 2015 Chicago Daily Law Bulletin Article	C223
	Exh. F	Chicago Sun Times Article	C224
	Exh. G	Complaint in [REDACTED] *v. Northshore University Health System, et. al*, Cook County Circuit Court No. 2016 L 062008	C226
	Exh. H	Order in [REDACTED] *v. Northshore University Health System, et. al*, Cook County Circuit Court No. 2016 L 062008 dismissing Complaint with prejudice	C238
	Exh. I	Notice of Appeal in [REDACTED] *v. Northshore University Health System, et. al*, Cook County Circuit Court No. 2016 L 062008	C240
July 17, 2017	Notice of Motion setting Motion to Dismiss for presentment		C241
July 18, 2017	Briefing Schedule for Motion to Dismiss		C242

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

September 8, 2017	Notice of Motion	C243
September 8, 2017	Motion for Entry of Agreed Order to Dismiss Defendant David J. Rashid	C245
September 14, 2017	Amended Motion for entry of Agreed Order to Dismiss Defendant David J. Rashid	C249
September 14, 2017	Notice of Amended Motion	C253
September 19, 2017	Briefing Schedule on Motion to Dismiss	C255
September 19, 2017	Order voluntarily dismissing David J. Rashid.	C257
September 19, 2017	Stipulation Regarding Agency	C258
November 17, 2017	Notice of (Electronic) Filing	C260
November 17, 2017	Response to Defendants' Combined Section 5/2–619.1 Motion to Dismiss Plaintiff's Complaint at Law	C263
November 20, 2017	Briefing Schedule for Defendants' Motion to Dismiss	C294
December 11, 2017	Briefing Schedule for Defendants' Motion to Dismiss	C295
December 18, 2017	Briefing Schedule for Defendants' Motion to Dismiss	C296
January 8, 2018	Briefing Schedule for Defendants' Motion to Dismiss	C297
January 12, 2018	Notice of Filing	C298
January 12, 2018	Defendants' Reply in Support of the Section 2–619.1 Motion to Dismiss	C300
January 16, 2018	Order allowing Sur-Response and Sur-Reply	C312
January 16, 2018	Order (Recusal of Judge Brigid Mary McGrath)	C313
January 17, 2018	Order (Reassignment to Judge Margaret Brennan)	C314
February 8, 2018	Agreed Order (scheduling)	C315

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

February 20, 2018	Sur-Response to Defendants' Combined Section 5/2–619.1 Motion to Dismiss Plaintiff's Complaint at Law	C317
	Exh. 1 American Bar Association Formal Opinion 479	C332
	Exh. 2 ARDC Review Board Report and Recommendation in *In re Jesse Raymond Gilsdorf*, Commission No. 2012 PR 000006	C345
	Exh. 3 May 22, 2015, email correspondence between Plaintiff and David J. Rashid	C355
February 20, 2018	Notice of (Electronic) Filing	C358
February 27, 2018	Clerk's Status Order	C361
March 7, 2018	Notice of Filing	C362
March 7, 2018	Defendants' Sur Sur Reply in Support of Their Section 2–619.1 Motion to Dismiss	C364
March 8, 2018	Clerk's Status Order	C374
April 5, 2018	Order (dismissing Counts I, II, III, and V with prejudice and dismissing Counts IV and VI without prejudice	C375
May 8, 2018	Notice of Change of Address	C376
May 15, 2018	Amended Complaint at Law	C377
	Exh. 1 Routine Motion for Qualified Protective Order Pursuant to HIPAA filed in underlying medical malpractice action	C417
	Exh. 2 Order Pursuant to HIPAA entered in underlying medical malpractice action	C420

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Exh. 3 Motion for Court Order to Issue Subpoena Pursuant to 740 ILCS 110/10 in underlying medical malpractice action C423

Exh. 4 Subpoena in a Civil Matter C428

Exh. 5 Order allowing Burke Wise Morrissey & Kaveny to enter substitute appearance in underling medical malpractice action C434

Exh. 6 May 8, 2015 press release on Burke Wise Morrisey & Kaveny website C436

Exh. 7 May 14, 2015 Article in the Chicago Daily Law Bulletin C439

Exh. 8 Chicago Sun Times Article C441

Exh. 9 Excerpts from Burke Wise Morrissey & Kaveny website

Elizabeth A. Kaveny profile on Burke Wise Morrisey & Kaveny website C444

David J. Rashid profile on Burke Wise Morrisey & Kaveny website C447

“News” page on Burke Wise Morrisey & Kaveny website C449

“Our History” page of Burke Wise Morrisey & Kaveny website.. C452

“Our Attorneys” page of Burke Wise Morrisey & Kaveny website.. C453

Exh. 10 LinkedIn posts C456

Exh. 11 Facebook posts C463

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

	Exh. 12	December 2016 email exchange between Elizabeth Kaveny and Christopher Goodsnyder.................. C466
	Exh. 13	Order in underlying medical malpractice action denying request to seal portions of the record.. C470
May 15, 2018	Notice of (Electronic) Filing.................................. C471	
May 22, 2018	Briefing Schedule Order (leave to file amended complaint) C474	
June 28, 2018	Agreed Amended Briefing Schedule Order........... C475	
July 18, 2018	Defendants' Section 2–615 Motion to Dismiss Plaintiff's Amended Complaint C476	
	Exh. A	Amended Complaint at Law............ C489
	Exh. B	April 5, 2018, Order......................... C529
	Exh. C	Transcript of April 5, 2018 hearing C530
	Exh. D	Count I of Amended Complaint at Law.. C563
	Exh. E	Transcript of plaintiff's trial testimony in underlying medical malpractice action.............. C566
	Exh. F	Order entering judgment on the verdict in underlying medical malpractice action.............. C621
		Verdict form in underlying medical malpractice action.............. C622
July 18, 2018	Notice of Filing.. C624	
July 26, 2018	Substitution of Attorneys (Ronald L. Bell & Associates substituting for Perl & Goodsnyder.... C626	
July 26, 2018	Additional Appearance (Ronald L. Bell) C627	

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

Date	Document	Page
July 26, 2018	Additional Appearance (plaintiff's appearance)	C628
July 26, 2018	Notice of Filing	C629
July 27, 2018	Motion for Substitution of Attorneys	C631
July 27, 2018	Notice of Motion	C634
August 8, 2018	Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint	C636
	Exh. A Order Pursuant to HIPPA entered in underlying medical malpractice action	C649
	Routine Motion for Qualified Protective Order Pursuant to HIPPA	C650
	Exh. B May 7, 2015 email form Elizabeth Kaveny to Plaintiff advising of media inquiries	C652
	Exh. C Excerpt from April 5, 2018, hearing transcript (trial court's ruling dismissing Count I)	C653
	Exh. D Medical records reflecting Plaintiff's treatment at Rehabilitation Institute of Chicago, dated April 13, 2013	C654
	Exh. E "10 facts on mental health" (internet article)	C664
	Exh. F Google Removal Policies	C665
	Exh. G Engagement letter between plaintiff and InternetReputation.com	C668
	Exh. H reportingonsuicide.org webpage	C669
August 8, 2018	Certificate of Service	C674
August 8, 2018	Notice of (Electronic) Filing	C675

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

August 29, 2018	Defendants' Reply in Support of Their Section 2–615 Motion to Dismiss Plaintiff's Amended Complaint	C676
August 29, 2018	Notice of Filing	C683
August 30, 2018	Plaintiff's Motion for Leave to File Plaintiff's Second Amended Complaint	C685
August 30, 2018	Second Amended Complaint at Law	C688
	Exh. 1 Routine Motion for Qualified Protective Order Pursuant to HIPAA filed in underlying medical malpractice action	C717
	Exh. 2 Order Pursuant to HIPAA entered in underlying medical malpractice action	C720
	Exh. 3 Motion for Court Order to Issue Subpoena Pursuant to 740 ILCS 110/10 in underlying medical malpractice action	C723
	Exh. 4 Subpoena in a Civil Matter	C728
	Exh. 5 Order allowing Burke Wise Morrissey & Kaveny to enter substitute appearance in underling medical malpractice action	C734
	Exh. 6 May 8, 2015 press release on Burke Wise Morrisey & Kaveny website	C736
	Exh. 7 May 14, 2015 Article in the Chicago Daily Law Bulletin	C739
	Exh. 8 Chicago Sun Times Article	C741
	Exh. 9 Excerpts from Burke Wise Morrissey & Kaveny website	

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

		Elizabeth A. Kaveny profile on Burke Wise Morrisey & Kaveny website	C744
		David J. Rashid profile on Burke Wise Morrisey & Kaveny website	C747
		"News" page on Burke Wise Morrisey & Kaveny website	C749
		"Our History" page of Burke Wise Morrisey & Kaveny website	C752
		"Our Attorneys" page of Burke Wise Morrisey & Kaveny website	C753
	Exh. 10	LinkedIn posts	C756
	Exh. 11	Facebook posts	C763
	Exh. 12	December 2016 email exchange between Elizabeth Kaveny and Christopher Goodsnyder	C766
	Exh. 13	Order in underlying medical malpractice action denying request to seal portions of the record	C769
August 30, 2018	Notice of Motion		C770
August 30, 2018	Notice of (Electronic) Filing		C772
September 10, 2018	Plaintiff's Sur-Reply to Defendants' Reply to Motion to Dismiss Plaintiff's Amended Complaint		C774
	Exh. 1	Order in underlying medical malpractice action granting motion for subpoena under the Mental Health and Developmental Disabilities Confidentiality Act	C781

SUBMITTED - 22174300 - Kimberly Jansen - 4/5/2023 5:12 PM

	Exh. 2	Washington Post article regarding release of sensitive information about an ex-CIA officer C783
	Exh. 3	December 2017 email from plaintiff's counsel to defense counsel regarding history of settlement discussions in underlying medical malpractice action C786
	Exh. 4	May 14, 2015 Chicago Daily Law Bulletin Article C788
	Ex. 5	Excerpt from April 5, 2018 hearing with trial court's ruling as to Count I C789
	Exh. 6	"The Statutory Privilege against Disclosure of Mental Health Records and the Opioid Crisis," Health Care Newsletter, December 2017 .... C793
	Exh. 7	Release Authorization Forms
		Blank Form—Authorization for Release of Information from Center of Collaborative Counseling and psychiatry C798
		Blank Form—Authorization for Release of Psychiatric Medical Records, Advocate Health Care C800
September 10, 2018	Notice of (Electronic) Filing C801	
September 11, 2018	Clerk's Status Order C803	
September 11, 2018	Order (allowing substitution of counsel) C804	
October 4, 2018	Order (striking Count I, dismissing Count VI with prejudice, and denied leave to file second amended complaint) C805	

October 17, 2018 Status Order C811

October 31, 2018 Defendants' Answer to Plaintiff's Amended Complaint C812

October 31, 2018 Affidavit of Insufficient Knowledge (David Wise) C860

October 31, 2018 Notice of Filing C861

November 1, 2018 Affidavit of Insufficient Knowledge (Elizabeth Kaveny) C863

November 1, 2018 Notice of Filing C864

November 9, 2018 Certificate of Service C866

November 9, 2018 Defendants' First Set of Interrogatories to Plaintiff C867

November 9, 2018 Defendants' First Set of Requests to Produce C878

November 9, 2018 Notice of Filing C886

December 14, 2018 Certificate of Service C888

December 14, 2018 Notice of (Electronic) Filing C889

December 19, 2018 Status Order C890

March 13, 2019 Status Order C891

February 13, 2019 Status Order C892

May 6, 2019 Notice of Motion C893

May 6, 2019 Motion for Leave to Substitute Attorneys C895

May 6, 2019 Substitution of Attorneys C897

May 6, 2019 Notice of Motion C898

May 6, 2019 Motion to Extend Discovery C900

May 21, 2019 Order (allowing substitution) C903

May 21, 2019 Status/Case Management Order C904

June 11, 2019 — Plaintiff's First Request for Admission of Facts and Supplemental Written Interrogatories C906

July 15, 2019 — Status/Case Management Order C911

August 23, 2019 — Status/Case Management Order C913

October 30, 2019 — Plaintiff's 213(f)(2) and (3) Disclosures C915

April 13, 2020 — Plaintiff's Motion for Reconsideration of this Court's April 5, 2018, Order Granting Defendants' 2–619.1 Motion to Dismiss Count I (MHDDCA) and October 4, 2018, Order Granting Defendants' Motion to Dismiss Count I as Amended C944

Exh. A — Rulings entered in *E.Z. v. The United States of America, et al*, United States District Court for the Northern District of Illinois, No. 17 C 216

Order (requiring defendant to destroy Protected Health Information as required by HIPPA order) C958

Memorandum Order and Opinion (awarding attorney fees as sanction for violation of HIPPA qualified protective order) C962

May 11, 2020 — Agreed Scheduling Order C979

June 19, 2020 — Defendants' Response to Plaintiff's Motion for Reconsideration C980

Exh. A — Excerpt from Plaintiff's Complaint C992

Exh. B. — Transcript of April 5, 2018 hearing C1000

Exh. C — Amended Complaint at Law C1032

	Exh. D	Order entered October 4, 2018 striking Count I, dismissing Count VI with prejudice, and denying leave to file second amended complaint	C1072
	Exh. E	Plaintiff's Motion for Leave to File Plaintiff's Second Amended Complaint	C1079
	Exh. F	First Amended Complaint in underlying medical malpractice action	C1111
	Exh. G	Motion for Court Order to Issue Subpoena Pursuant to 740 ILCS 110/10 filed in underlying medical malpractice action	C1127
	Exh. H	Order Pursuant to HIPPA in underlying medical malpractice action	C1132
	Exh. I	Public Act 99–0028 (amending Mental Health and Developmental Disabilities Confidentiality Act)	C1135
June 19, 2020	Notice of Filing		C1141
July 29, 2020	Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Reconsideration		C1148
	Index to Exhibits		C1159
	Exh. A	Disciplinary Decisions	
		In the mater of Kristine Ann Peshek, Supreme Court No. M.R. 23794, Commission No. 09 CH 89	C1162

In re: Jesse Raymond Gilsdorf, Commission No. 2012PR 00006 (June 2013) C1169

In re: Jesse Raymond Gilsdorf, Commission No. 2012 PR 00006 (December 2013) C1193

In the Matter of Betty Tsamis, Commission No. 2013 PR 00095 .... C1205

Exh. B Formal opinion 480 of the American Bar Association's Standing Committee on Ethics and Professional Responsibility (issued March 6, 2018), "Confidentiality Obligations for Lawyer Blogging and Other Public Commentary" C1212

Exh. C Deposition of Adrienne Vukovich C1220

Exh. D Formal opinion 479 of the American Bar Association's Standing Committee on Ethics and Professional Responsibility (issued December 15, 2017), "The Generally Known Exception to Former-Client Confidentiality" C1252

Exh. E ABA Opinion 10-457 .... C1259

Exh. F Blank Form—Authorization for Release of Patient Health Information C1266

August 13, 2020	Order (denying motion for reconsideration)	C1267
October 14, 2020	Plaintiff's Motion for Leave to File an Amended Complaint with Negligence Count and Reinstate the Remedy of Disgorgement of Fees	C1268
October 14, 2020	Plaintiff's Motion to Allow a Jury to Resolve the Issue of Damages, or in the Alternative, For the Court to Impanel and Advisory Jury	C1275
November 5, 2020	Scheduling Order	C1280
December 23, 2020	Scheduling Order	C1281
December 29, 2020	Defendants' Response to Plaintiff's Motion to Allow a Jury to Resolve the Issue of Damages, or in the Alternative for the Court to Impanel an Advisory Jury	C1282
	Exhibits	
	Exh. A Order entered October 4, 2018 striking Count I, dismissing Count VI with prejudice, and denying leave to file second amended complaint	C1293
	Exh. B Affidavit of Adam R. Vaught	C1300
December 29, 2020	Notice of Filing	C1302
December 29, 2020	Defendants' Response to Plaintiff's Motion for Leave to File an Amended Complaint With Negligence Count and Reinstate the Remedy of Disgorgement of Fees	C1303
	Exh. A Proposed Negligence Count	C1315
	Exh. B Order entered October 4, 2018 striking Count I, dismissing Count VI with prejudice, and denying leave to file second amended complaint	C1319
	Exh. C Excerpt from transcript of April 5, 2019 hearing	C1326

Date	Document		Page
	Exh. D	Complaint at Law (excerpt)	C1329
	Exh. E	Deposition of Elizabeth Kaveny (excerpt)	C1332
December 29, 2020	Notice of Filing		C1335
December 31, 2020	Plaintiff's Motion to Compel the Deposition of David J. Rashid		C1336
	Exh. A	Group Exhibit (documents related to voluntary dismissal of David Rashid)	
		Settlement Agreement between Plaintiff and David Rashid	C1338
		Stipulation Regarding Agency	C1340
		Voulntary Dismissal Order	C1342
		September 19, 2017 Briefing Schedule Order	C1344
January 20, 2021	Scheduling Order		C1345
January 26, 2021	Plaintiff's Combined Reply to Defendants' Response to Plaintiff's Motion for Leave to File an Amended Complaint with Negligence Count and Plaintiff's Reply to Defendants' Response to Plaintiff's Motion to Allow a Jury to Resolve the Issue of Damages		C1346
	Exh. A	Restatement (Third) of the Law Governing Lawyers § 37	C1355
	Exh. B	"No financial harm do, but Fees Lost," Trial Notebook column in the Chicago Daily Law Bulletin	C1370
		Parkinson v. Bevis, Idaho Supreme Court No. 46269	C1374
	Exh. C	Jury Verdict Reporter	C1388
January 28, 2021	Clerk's Status Order		C1391

March 5, 2021	Order (denying motion for advisory jury and denying motion for leave to add negligence count) C1392
March 25, 2021	Order (denying motion to compel deposition of David Rashid C1396
April 16, 2021	Plaintiff's Motion for Reconsideration of April 5, 2018 Order Granting motion to dismiss Count II and October 4, 2018 Order Dismissing Count V C1397
April 23, 2021	Notice of Motion C1447
April 26, 2021	Scheduling Order C1449
June 2, 2021	Defendants' Response to Plaintiffs' Motion to Reconsider Dismissal of Counts II and V C1494
	Exh. A Order entered March 5, 2021 .... C1450
	Exh. B Transcript of April 5, 2018 hearing C1456
	Exh. C Order C1488
June 2, 2021	Defendants' Response to Plaintiff's Motion for Reconsideration C1494
June 2, 2021	Notice of Filing C1503
June 16, 2021	Plaintiff's Reply to Defendants' Response to Motion to Reconsider Dismissal of Counts II and V C1505
	Exh. A Assorted articles re: Jussie Smollett medical records C1515
	Exh. B Article re birth injury medical malpractice case C1525
	Exh. C *Carlton at the Lake, Inc. v. Barber*, 2014 IL App (1st) 131334-U C1527
June 23, 2021	Clerk's Status Order C1538

July 16, 2021 — Defendants' Motion for Disclosure of Mental Health Records C1539

Exh. A — Amended Complaint at Law.......... C1548

Exh. B — Plaintiff's 213(f)(2) and (3) Disclosures C1588

Exh. C — Deposition of Plaintiff.................... C1618

July 16, 2021 — Notice of Motion.. C1675

July 23, 2021 — Order (denying motion to reconsider dismissal of Counts II and V) C1676

August 31, 2021 — Motion to Voluntarily Dismiss Pursuant to 735 ILCS 5/2–1009... C1681

September 9, 2021 — Order (dismissing breach of fiduciary duty claim with leave to refile consistent with *Hudson*) C1683

October 7, 2021 — Notice of Appeal... C1684

October 21, 2021 — Request for Preparation of Record on Appeal C1687

Report of Proceedings

Report of Proceedings — Table of Contents R1

September 9, 2021 — Hearing on Motion for Voluntary Dismissal R2