Alleged Violation of Judge Mata's February 26, 2024 Order

29. On September 14, 2023 (prior to Respondent's involvement in the case[4]), Owens filed, *pro se*, an *Expedited (!) Motion to Seal Court Record* (parenthetical and exclamation point in original), asking the court to seal the entire record in both the paternity case and the OOP case, as well as records that may be filed thereafter.

30. On October 18, 2023, Judge Mata issued a minute entry order (which was entered on October 20, 2023) denying Owens' request to seal the record.

31. On January 17, 2024, Cory Keith, Owens' prior counsel, filed a *Motion for Confidentiality and Preliminary Protective Order*, which requested an order that would allow the parties to designate relevant discoverable information and depositions as confidential, which the parties would be prohibited from disseminating to anyone other than the parties and their counsel, absent a court order. The proposed order explicitly stated that only the parties, their attorneys and their staff, the court, and expert and other witnesses would have access to the documents deemed "confidential," but that the party designating a document as "confidential" could disclose it to "[a]ny other person or entity that the [d]esignating [p]arty agree[d] to in writing." The proposed order also stated that the confidential materials could be used only for "the purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or defending the [paternity] Proceeding, and not for any business, personal, or other purpose whatsoever."

32. On February 15, 2024, Judge Mata issued a minute entry order (which was entered on February 21, 2024) denying the *Motion for Confidentiality and Preliminary Protective Order*.

33. On February 21, 2024, during a status conference, Owens' former counsel orally moved the court to readdress his *Motion for Confidentiality and Preliminary Protective Order*. Judge Mata denied that motion. A minute entry order regarding that status conference, issued on February 21, 2024 (which was entered on February 26, 2024), stated:

> **IT IS FURTHER ORDERED** denying counsel for Petitioner [Laura Owens]'s oral motion to reconsider regarding the ruling concerning Petitioner's Motion for Confidentiality.
>
> . . . .
>
> Further discussion is held regarding discovery and disclosure.
>
> Counsel for Petitioner addresses the Court with an oral request to have the Court order his client provide medical records pertaining to the pregnancy only.
>
> **LET THE RECORD FURTHER REFLECT** that no party shall disclose outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties.

[4] Respondent did not file a notice of appearance in the case until March 25, 2024.

IT IS FURTHER ORDERED that the records be disclosed dating back to August 2020.

(Capitalization and bold typeface in original). That minute entry order did not, for purposes of what could be disclosed to the public, distinguish between *who* had disclosed the documents between the parties; rather, it stated that no party could disclose medical or other documentation that had been disclosed between the parties.

34. On March 25, 2024, Respondent filed a notice of appearance on Owens' behalf in the paternity case.

35. On April 1, 2024, Respondent filed a *Motion for Extension of Time to Respond to Respondent [Echard]'s Motion to Compel*. That *Motion for Extension of Time* included copies of portions of Owens' medical records, but did not include a motion to seal either Owens' medical records or the entire motion based on Judge Mata's February 26, 2024 minute entry order.

36. On April 4, 2024, at 12:56 p.m., Gregg Woodnick, Echard's counsel, sent an email messages to Respondent, which stated in part: "I am also not certain why you are publishing court documents and your client's personal medical records contrary to court order. Laura [Owens] needs to comply with the order and provide disclosure."

37. Also on April 4, 2024, at 1:30 p.m., Respondent responded to Attorney Woodnick's April 4, 2024 email message. That email message stated in part:

> Thank you for the email, and your words are noted. [. . .]
>
> [. . . .]
>
> As for the other points you mention, a few comments:
>
> First, I am aware of no court order that would stop Laura from publishing her own medical records. Yes, I am aware there is a minute entry order dated 2/21/24 that says, among other things, "no party shall disclose outside of themselves [odd wording] any medical or other documentation . . . *disclosed between the parties*."
>
> I was obviously not present when that order was entered, so I may not have the full context, but my reading of this is if *Laura* discloses medical records to you, you can't share them publicly, and if Clayton shares records with us, we can't share them publicly. That's typical, and it is how I read the court's order. If my reading is correct, it does not prohibit Laura from posting her own medical records, which she did solely to rebut false claims from your side that no such records existed. There is nothing nefarious or improper about this.
>
> If you interpret the order to mean that Laura is somehow *enjoined from publishing her own records* for the purpose of responding to false statements other people are making (including Dave Neal, who Clayton [Echard] is clearly working directly with), you need to let me know that immediately so I can take the issue up with the judge.
>
> There is clear case law on that issue – a court could never issue such an order, which is why I give the minute entry order a narrower reading. Any broader

reading would make the order unconstitutional. In fact, the order would be *void ab initio* meaning it could simply be ignored. I know this because I've litigated the identical issue in other cases. *See*, *e.g.*, *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 259 (1966) (holding order prohibiting disclosure of details of court hearing violated Arizona constitution and was void; Superior Court has no authority to "foreclose the right of the people and the press from freely discussing and printing the proceedings held in open court.")

Laura's medical records were filed in a pleading submitted to the court and which is a public record. There is no protective order against this (nor would there be any basis for one), so anyone is free to share that information with the public, which is all I did.

(Brackets around "odd wording," underlines, and italics in original).

38. On April 26, 2024 (a Friday), at 5:52:37 p.m., Respondent filed with the Maricopa County Superior Court Clerk's Office a *Petitioner's Response to Respondent's Amended Motion for Relief Based on Fraud* ("April 26 *Response*"). That response failed to include a motion to seal either Owens' medical records or the entire *Response* based on Judge Mata's February 26, 2024 minute entry order.

    a. Included in that April 26 *Response* (at the bottom of page 10) was a quotation taken from Drs. Deans and Justicia-Linde's expert report, which had been prepared for Echard. It also included a summary of portions of their expert report. Respondent failed to move to seal those documents from the public.

    b. Attached to that April 26 *Response* was a copy of Echard's expert witnesses' (Drs. Deans and Justicia-Linde's) expert report and Dr. Deans' curriculum vitae. Respondent failed to move to seal those documents from the public.

    c. Also attached to that April 26 *Response* was a copy of Owens' expert witness's (Dr. Michael T. Medchill's) expert report and curriculum vitae. Respondent failed to move to seal those documents from the public.

    d. Also attached to that April 26 *Response* were copies of Owens' medical records and other documents relevant to Echard's claims (*e.g.*, Owens' affidavit dated April 16, 2024, which was attached to the April 26 *Response*, included information from Owens' medical records and portions of her medical reports/records), which Respondent had previously provided to Echard's counsel with his disclosure statement dated April 22, 2024. Respondent failed to move to seal those documents from the public.

    e. That April 26 *Response* was not docketed immediately. As a result, that April 26 *Response* was unavailable to the public, until April 29, 2024.

39. On April 29, 2024, the Maricopa County Superior Court Clerk's Office docketed Respondent's April 26 *Response*.

40. According to a third party, Respondent posted on his personal X (formerly Twitter) account and/or his law firm website and/or elsewhere on the internet a link to, among other things, his April 26 *Response*, which included portions of Owens' medical records. That link was posted and became available for public viewing at approximately noon on Saturday, April 27, 2024.

a. In response to the allegation, Respondent claimed that Echard's expert witnesses' report was first posted on the Internet by the superior court and/or Echard or his supporters (Respondent's April 26 *Response*, however, was not docketed until April 29, 2024, so it could not have been available to the public by the Clerk's Office until April 29). Respondent also claimed that his April 26 *Response* was available to the public through the Maricopa County Superior Court Clerk's Office Electronic Court Record (ECR) service; access to the ECR system, however, is limited to registered users who are parties in filed cases and court-related personnel.

41. Complainants/physicians Deans and Justicia-Linde stated they did not consent to the publication of their expert report or their curriculum vitae, nor would they have, because their report contained a review of Owens' private medical records and was intended solely for the attorneys and the court's review. Drs. Deans and Justicia-Linde claimed that Respondent's posting was in direct violation of Judge Mata's order, that Respondent was well aware of the media's attention to the case, and that he was aware that his Twitter postings and blog were widely read.

42. Complainants/physicians Deans and Justicia-Linde stated, "Agreeing to provide an expert opinion is a commitment to scientific scrutiny, but it is certainly not permission to dox,[5] share, and mock us online when our expert opinion does not align with the opinion of legal counsel." They were concerned that Respondent's acts were "an overt effort to intimidate and ridicule [them] via his social media platform." They further stated that if the State Bar does not find Respondent's conduct as disturbing as they did that they would "be hard pressed to encourage other physicians to provide expert opinions." Finally, they stated that "[t]he damage done by [Respondent] cannot be fixed by simply removing the postings because they have already been read and replied to, and the internet is forever."

43. During the hearing on June 10, 2024, Echard's expert witness reports were admitted into evidence and discussed during questioning, without any request that they be sealed. Dr. Deans testified during the June 10, 2024 hearing that she did not authorize Owens to publish her report and was initially unaware that it had been posted online.

Respondent's Response

44. Respondent stated there was no court order sealing anything or otherwise preventing the disclosure of pleadings, transcripts, depositions, or records filed in the paternity case. He noted that Echard never sought a protective order and never filed a motion to seal any records.

45. Respondent noted that one sentence in Judge Mata's February 26, 2024 minute entry order (paragraph 33, above) "seem[ed] to reflect some sort of informal agreement between the parties not to publish medical records disclosed by the other party." He said Echard never disclosed any medical records of any kind in the paternity case, and that the only medical records at issue in the case were Owens' records. He stated that Owens authorized him to publish her medical records in an attempt to respond to false statements made by Echard and Echard's attorneys and supporters.

46. Respondent stated it was clear that Attorney Woodnick, Echard's counsel, interpreted Judge Mata's order entered on February 26, 2024, similarly to the way he interpreted it.

[5] According to the Merriam-Webster dictionary, "dox" means to publicly identify or publish private information about someone, especially as a form of punishment or revenge.

For example, Attorney Woodnick disclosed Owens' medical history and portions of Owens' deposition transcript in documents filed in court and in a press release. He further stated that shortly after he began representing Owens, he asked both Owens and Echard's counsel whether a protective order had been entered. Both informed him that no such order existed, which he confirmed by reviewing the court's docket. Based on the release of information by Echard's counsel, Respondent saw no legal basis to file Drs. Deans and Justicia-Linde's expert witness report under seal. He explained that he interpreted Judge Mata's February 21, 2024 order to prohibit the disclosure of private medical records *received from the other party* and about *the other party's medical status*. He said the expert report did not qualify as Echard's "medical record" because it was a report of an expert opining on *Owens*' medical condition. He said he asked for an opinion from Echard's counsel about the extent of Judge Mata's order, but Echard's counsel failed to discuss that issue with him.

47. Based on Respondent's belief that Judge Mata had not entered an order prohibiting the publication of the experts' report, Respondent posted Echard's expert witness report online, which he said he did "as part of a public discussion of the issues." He asserted that the charge of misconduct was misleading because the expert witness report was first posted on the Internet by the Superior Court's Electronic Court Record (ECR) system on April 26, 2024, and also by Echard or his supporters. (See paragraph 40.a., above).

48. Respondent said he posted the report to respond to false and defamatory statements that had been made by Echard and his counsel. He stated he published his April 26 *Response* and Owens' medical records and documents "with the express written permission of Ms. Owens." Note: When Echard's supporters posted his April 26 response and Owens' medical records online, they redacted Owens' name.

49. Respondent admitted that his April 26 *Response* discussed the experts' report on pages 8 through 11 under the heading "Ms. Owens Was Pregnant." His April 26 *Response* also discussed the report provided by Owens' medical expert, Dr. Michael Medchill. Respondent said expert reports from both parties were provided to the court because they were directly relevant to the issues raised in Echard's *Motion for Relief from Judgement [sic] Based on Fraud* (which had been filed on March 26, 2024, in Maricopa County Superior Court File No. FC2023-052771, an order of protection proceeding between Owens and Echard) and *Amended Motion for Relief from Judgment Based on Fraud* (underline in original) (which had been filed on April 26, 2024). That *Amended Motion for Relief from Judgment* asserted that Owens had "faked" being pregnant by Echard.

50. Respondent said he disclosed Drs. Deans and Justicia-Linde's expert witness report not to harass or embarrass them, but solely because the report was directly relevant to the allegations raised by Echard in a motion seeking relief from an order of protection in which he claimed that Owens had obtained the order by "fraud." He claimed that because the report was directly relevant to that issue, his public sharing of the report and his comments about its lack of strength do not implicate ER 4.4(a). He claimed he did not violate ER 4.4(a) because he had a substantial, legitimate purpose for posting the report, *i.e.*, helping defend Owens against false statements made by Echard, and to help the court and the public understand the facts and the issues.

51. Respondent said Judge Mata's February 26, 2024 order "says nothing about prohibiting the publication of expert reports." He said that if the court had issued an order sealing or otherwise prohibiting the public disclosure of Drs. Deans and Justicia-Linde's report, Echard's counsel could have immediately moved to seal the pleading to which it had been

attached or asked the court to hold Respondent in contempt for filing the document without permission. Respondent said Echard's counsel did neither because he knew the court did not issue any such order protecting the experts' report or the report of any other expert, including Owens' expert, which had also been filed as an exhibit.

52. Respondent stated that Owens and her previous counsel, both of whom attended the February 21, 2024 hearing, were "completely baffled" by what the Court meant when Judge Mata stated in her February 26, 2024 order that "no party shall disclose outside of themselves any medical or other documentation." He explained that they were "baffled" because, during that same hearing, Judge Mata had denied Owens' counsel's motion to reconsider the prior motions for protective orders, which Judge Mata had previously denied. Respondent said that based on the two arguably conflicting rulings (the denial of the motion to reconsider the prior denials of the requests for a protective order and the February 21, 2024 minute entry order prohibiting the parties from "disclos[ing] outside of themselves any medical or other documentation (exhibits, medical records, etc.) disclosed between the parties"), Owens was left with "no idea" what the court actually intended in terms of sealing records or prohibiting any party from disclosing information publicly.

53. Respondent said he spoke with Echard's counsel regarding Judge Mata's rulings and that he informed Echard's counsel that he believed the court had not and could not order Owens to refrain from publishing her own medical records, and that Judge Mata could not forbid a party from disclosing other information, including Drs. Deans and Justicia-Linde's report, which had been included as an attachment to a court filing that appeared on the court's public docket. Respondent stated that shortly after he became Owens' counsel, Echard's counsel expressed his belief that Judge Mata's February 21, 2024 order somehow limited Owens' ability to publish information, including her own medical records.

54. Respondent informed bar counsel that he believed his message to Echard's counsel on April 4, 2024, was clear: He did not read Judge Mata's February 21, 2024 order as prohibiting Owens from sharing her own medical records, nor did he "read the order as otherwise prohibiting the publication of pleadings, exhibits, etc." Respondent explained to bar counsel that "Dr. Deans' expert report is not a 'medical record' belonging to Mr. Echard – it is simply a report that summarizes the opinions of Dr. Deans, as she later testified to at trial." While Owens' requests for a protective order were denied on three occasions, Judge Mata, during the February 21, 2024 hearing, made what Respondent referred to as a passing comment indicating that she expected the parties were not to publicly share *medical records* "disclosed between the parties." Respondent understood that Judge Mata's denial of Owens' requests for a protective order on three occasions meant there was no actual order limiting what the parties could disclose. He further stated that "[a]t the same time the court understood that Laura [Owens] was still obligated to disclose some of her personal medical records, and so she (the judge) expressed her intention that [Echard's counsel] not share Laura [Owens]'s records publicly." (Parenthesis in original). Respondent said that after he explained his position to Echard's counsel, he told Echard's counsel that if he disagreed with his view that "[he] need[ed] to let [him] know that immediately[,] so [he could] take the issue up with the judge." Echard's counsel never responded to that request, which Respondent said he took to mean that Echard's counsel understood his analysis and agreed with his position.

55. Respondent noted that Dr. Deans was a trial witness, and that her report and curriculum vitae were trial exhibits. Both the expert report and Dr. Deans' curriculum vitae were admitted into evidence without restriction and without objection. As a result, Respondent

argues that "the court did not, at any time, issue any order restricting Dr. Deans' report from public view."

56. Conclusion: Respondent violated ER 3.4(c), ER 3.6(a), ER 4.4(a) and Rule 54(c), Ariz. R. Sup. Ct., by violating Judge Mata's April 26, 2024 order that prohibited the parties from "disclos[ing] outside of themselves any medical or other documentation (exhibits, medical records, etc.)."