IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

**JOHN DOE**

Plaintiff,

v.

**MISSOURI DENTAL BOARD**

Defendant.

Case No. **0916-CV23840**
**Division 9**

## ORDER

Pending before the Court is The Missouri Dental Board's and Brian Barnett's Motion to Require Plaintiff's Name in Pleading and That the Seal Be Lifted. For the reasons stated below, the Motion is granted.

### Background

On August 4, 2009, a dentist, using the alias John Doe, filed a Petition under seal seeking declaratory judgment and a writ of prohibition against the Missouri Dental Board and Brian Barnett, as Executive Director of the Board, [hereinafter "the Board"] alleging the Board violated its own rule "regarding the handling of anonymous letters" and regarding any discipline resulting from the Board's investigation. See Pet. at 9. By agreement of the parties, this Court entered a Preliminary Order prohibiting the Board from taking any action against John Doe or revealing his identity. The Board filed the pending Motion requesting the Court require John Doe reveal his identity and unseal the case. John Doe opposed the request. Argument, well prepared and presented by counsel, was heard on the motion.

Background concerning the underlying administrative action giving rise to this case is necessary for context. The Board received an anonymous complaint involving John Doe. The Board maintains that pursuant to its governing regulations, it closed the complaint because it was

anonymous, but opened its own complaint and proceeded to investigate John Doe. 20 CSR 2110-2.200(2), (5). John Doe disputes the Board's authority. In any case, the investigation revealed some regulatory violations, and John Doe admitted to the violations under oath. He attempted to settle the matter before it was filed formally and publicly at the administrative hearings commission. John Doe requested the Board issue a private reprimand as opposed to publishing his name and the discipline dispensed. He asserts his practice is referral based and he will suffer harm to his reputation and business if the Board publicly discloses his discipline. The Board rejected this request and took steps to file a formal complaint. This Court's Preliminary Order prevented the Board from proceeding.

Analysis

No reported Missouri cases address the specific issue currently before the Court. However, Missouri law provides a strong presumption in favor of public access to court records and a party seeking to close those records must provide "compelling justification." Pulitzer Publ'g Co. v. Transit Casualty Co., 43 S.W.3d 293, 300-01 (Mo. 2001) (citing San Jose Mercury News v. United States Dist. Ct., 187 F.3d 1096, 1102 (9th Cir. 1999) (recognizing strong presumption in favor of public access that can be overcome only by "compelling reasons and specific factual findings"); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 781 (3d Cir. 1994) (recognizing the "strong presumption of access"); In re Knoxville News-Sentinel Co., Inc., 723 F.2d 470 (6th Cir. 1983) (discussing the "long-established legal tradition" of "the presumptive right of the public to inspect and copy judicial documents and files"); United States v. McVeigh, 119 F.3d 806, 811 (10th Cir. 1997) (presumption of public access); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 737 N.E.2d 859, 868 (Mass. 2000) (the presumption of public access facilitates public scrutiny of the workings of public agencies); Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356, 662 A.2d 546, 556 (N.J. 1995) (strong presumption of access)). "Vague or

uncertain threats claimed by one party normally would not justify closure." Pulitzer Publ'g Co. 43 S.W.3d at 302.

Here, John Doe claims his business reputation is threatened by the release of his name by the Board. On its face, John Doe's proffered reason for use of an alias is not "compelling." First, the actual threat to the success of his referral business is uncertain and vague.[1] Second, the type of harm alleged – a potential economic loss – is simply not the kind of harm courts have found deserving of alias protection. Usually such matters include extreme personal embarrassment, threats of physical harm and harassment, and cases involving minors. See e.g., Doe v. Blue Cross & Blue Shield United, 112 F.3d 869, 872 (7th Cir. Wis. 1997) (plaintiff with psychiatric disorder could not file under alias); Akron Ctr. for Reprod. Health, Inc. v. City of Akron, 651 F.2d 1198, 1210 (6th Cir. 1981) (district court did not abuse its discretion in denying a pregnant woman and doctor's request to proceed under pseudonyms in abortion case), reversed in part on other grounds, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983); Doe v. Colautti, 592 F.2d 704 (3d Cir.1979) (plaintiff suffering from mental illness permitted to use alias); Doe v. Commonwealth's Attorney for Richmond, 403 F.Supp. 1199 (E.D.Va.1975), aff'd, 425 U.S. 901 (1976) (alias appropriate for homosexual plaintiff); Doe v. McConn, 489 F.Supp. 76 (S.D.Tex.1980) (alias appropriate for transsexual plaintiff); Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185 (2d Cir. N.Y. 2008) (plaintiff alleging sexual and physical assault); Doe v. Hartz, 52 F. Supp. 2d 1027 (N.D. Iowa 1999) (plaintiff not entitled to alias in priest abuse case or when allegations of brutal sexual assault made).[2] Some personal embarrassment is not enough to warrant anonymity. Doe v. Frank, 951 F.2d 320 (11th Cir. Fla. 1992).

John Doe argues numerous plaintiffs have been permitted to proceed with a "Doe" alias in Missouri courts. The cases cited by John Doe, however, either did not analyze the alias issue,

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[1] The infractions at issue are relatively minor.

[2] It is likely courts today would not permit an alias even in these types of cases.

involved minors in need of protection, or involved plaintiffs accused of being sex offenders. See, e.g., Doe v. Mo. Dep't of Soc. Servs., 280 S.W.3d 110 (Mo. Ct. App. 2009); State ex rel. Doe v. Moore, 265 S.W.3d 278, 279 (Mo. 2008), Doe v. Phillips, 261 S.W.3d 611 (Mo. Ct. App. 2008). He was unable to produce case law upholding an alias when the plaintiff was concerned about a potential business loss.

John Doe advocates for the use of a factor test employed by Federal Courts to balance the privacy versus openness interests. Even adopting this approach, the factors weigh against anonymity in this instance. Such factors considered often include: (1) whether the litigation involves matters that are highly sensitive and of personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms; (4) whether plaintiff is particularly vulnerable to the possible harms of disclosure; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether defendant is prejudiced by allowing plaintiff to press his claims anonymously; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the identification; (9) and whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff. See Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992) (internal quotations and citations omitted) (lengthy discussion of factors considered by numerous federal circuits).

As noted above, the issues presented here do not rise to the level of "highly sensitive." John Doe is not particularly vulnerable and faces no risk of physical or mental harm. John Doe correctly asserts the Board is not particularly prejudiced by a short delay in the release of his

name, and the public would have no great interest in the particular legal issues presented. [3] However, these factors in favor of anonymity do not overcome the strong presumption in favor of openness and public access.

John Doe asserts if he is forced to relinquish his anonymity in circuit court filings to pursue his remedies against the Board, he will "abandon the very relief sought." Pl.'s Reply at 3. He argues his right of access to the courts will be denied. John Doe can still pursue his remedies. While he cannot pursue them anonymously, he can still challenge the authority of the Board and perhaps escape discipline altogether. In any case, his concern over possible loss of business does not rise to the level of a "compelling" reason. "Justice is best served when it is done within full view of those to whom all courts are ultimately responsible - the public." Pulitzer Publ'g Co., 43 S.W.3d at 301.

It is hereby

ORDERED The Missouri Dental Board's and Brian Barnett's Motion to Require Plaintiff's Name in Pleading and That the Seal Be Lifted is granted. It is further

ORDERED within thirty days from the date of this Order, John Doe shall amend his Petition, remove the alias designation, and remove the case from under seal.

October 2, 2009
Date

**Joel F. May, Judge**

A copy of the above was faxed/mailed on this October 1, 2009

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[3] The public does, however, have a strong interest generally in litigation and discipline involving health care professionals.