

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JAYSEN MCCLEARY,

Plaintiffs,

v.

CITY OF DES MOINES, IOWA and JERRY  
SCHILLINGER,

Defendants.

Case No: LACL134328

**ORDER**

Plaintiff's Motion to Seal his expert reports designated on July 27, 2017 came before the undersigned. Upon review of this Motion, the Court finds satisfactory reasons exist to grant it.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Seal his expert reports designated on July 27, 2017 is GRANTED. The attachments shall be filed at EDMS Case Level Security Level 9.

The above captioned case was dismissed with prejudice on November 13, 2017.

Consistent with the Protective Order filed on February 23, 2017, IT IS FURTHER ORDERED THAT the written reports of Plaintiff expert witnesses Claude Ruffalo, Ph.D., Murray Solomon, M.D., Fernando Miranda, and Stan Smith, Ph.D. including all copies made thereof, inadvertently not designated as "Confidential", shall be deemed confidential, and "Protected Materials" under the Court's Protective Order filed on February 23, 2017. As such, such reports shall immediately be destroyed by Defendants and any third parties now in possession of them. Likewise, such "Protected Materials" may not be disclosed by the Defendant or any third-party. Defendants' or any third-party's failure to abide by the terms of this Order will subject that person or entity to any and all legal remedies available to Plaintiff as set forth fully in Paragraph 13 of this Court's Protective Order filed on February 23, 2017.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**  
LAACL134328

**Case Title**  
JAYSEN MCCLEARY VS CITY OF DES MOINES AND JERRY  
SCHILLINGER

So Ordered

A handwritten signature in cursive script, appearing to read "Jeffrey Farrell".

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Jeffrey Farrell, District Court Judge,  
Fifth Judicial District of Iowa

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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<p>JAYSEN MCCLEARY,  Plaintiff,  vs.  CITY OF DES MOINES, IOWA and JERRY SCHILLINGER,  Defendants.</p>	<p><b>CASE No: LACL 134328</b></p>  <p><b>PROTECTIVE ORDER</b></p>
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For good cause including, without limitation, the proprietary or confidential nature of information likely to be disclosed during the course of discovery and trial of this case,

**IT IS HEREBY ORDERED THAT THIS ORDER:**

1. Prohibits the parties from using or disclosing the protected information, immediately including all financial and health<sup>1</sup> records for any purpose other than the litigation or proceeding for which such information was requested; and
2. Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding after the time to appeal has expired or been expressly waived in writing.
3. Materials and information protected by this Order (hereinafter referred to as “Protected Materials”) includes any material not limited to but immediately including health and financial records as well as other materials currently in possession of the defendant and additional future information so designated by the Plaintiff in accordance with Paragraphs 2 and 3 of this Order.
4. Any party to this action may designate as “Confidential” documents (including electronically stored information,) responses to requests for information or documents,

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<sup>1</sup> Health records include all medical and mental health records.

deposition transcripts or portions thereof, hearing testimony or portions thereof, and any other documents, material or information heretofore or hereafter produced or disclosed by any party to this action.

5. At the time of production or disclosure, Protected Materials should be stamped or designated with the word "Confidential" or identified by production number or other suitable description in a letter accompanying the production. Inadvertent failure to make a "Confidential" designation prior to production will not prevent a subsequent confidentiality designation being made orally and/or in writing.

Any and all documentation exchanged between the parties, including but not limited to the parties' respective initial disclosures; documents obtained via subpoena by either party; and/or through informal or formal discovery, up to and including the date of this Order shall be deemed "Protected Materials" and shall be confidential subject to the terms of this Protective Order.

If the document or its contents have already been disclosed by the receiving party to individuals other than the individuals identified in Paragraph 8, such documents are deemed Protected Materials and the receiving party shall retrieve such document or its contents and/or otherwise cause such document to or its contents to be destroyed.

In addition, any such person that does not meet the definition of a qualified party as defined in paragraph 8 who received Protected Materials regarding Plaintiff must be identified and then notified that they are bound by this protective court order.

6. Protected Materials may only be used by the persons identified in Paragraph 8 of this Order, for purposes of this litigation or any appeals therefrom. Protected Materials may not

be used for any other purpose whatsoever and must be destroyed after the legal rights to appeal have expired.

7. Protected Materials may not be disclosed in any matter, directly or indirectly, to any person other than Qualified Persons as defined in Paragraph 8 of this Order.

8. “Qualified Persons” as used in this Order means:

- a. Persons who appear on the face of the Protected Material as an author, addressee, or recipient of the Protected Material or who would have had access in the course of their employment or agency to the Protected Material;
- b. Any designated witness called to testify at trial regarding the specific protected subject matter;
- c. Attorneys of record and employees of such attorneys whose access to Protected Materials is necessary for purposes of preparation, trial, appeal, or settlement of this litigation;
- d. A party’s in-house counsel, and legal staff and employees, whose access to Protected Materials are necessary for the purposes of preparation, trial, appeal, or settlement of this litigation, including Ryan Uetz from the defendants’ legal department;
- e. Independent third parties retained or used by attorneys of record in this litigation solely for the purposes of preparation that require review of the protected material, trial, appeal, or settlement of this litigation;
- f. Court reporters while in the performance of their official duties, provided that these persons may retain Protected Materials only as long as is

necessary for the conduct of their duties in this litigation which will expire once the parties right to appeal have expired or been waived in writing;

- g. Named parties, and officers and employees of corporate parties, who are working on this litigation and to whom it is necessary that Protected Materials be disclosed for purposes of preparation, trial, appeal, or settlement of this litigation; and

9. If any party files Protected Materials with the Court, for any purpose, including but not limited to, support of a discovery motion, dispositive motion, pretrial motion, or post-trial motion, the party must move to file the Protected Materials under seal.

10. The parties shall provide ten days' notice of their intention to serve a non-party subpoena by providing a copy of the subpoena to be served to every other party via email. Reasonable notice of five days, excluding exceptional circumstances, must be given to each party to state objections or propose modifications to a subpoena. The subpoenaing party shall make available to every other party for inspection and copying any documents, electronically stored information, or tangible things produced pursuant to the subpoena within ten days of receipt, excluding exceptional circumstances. The times provided in this paragraph may be shortened or extended by written agreement between the parties without the necessity of motion or further order of the Court.

11. This Order does not limit or waive the right of any party to object to the scope of discovery in the above-captioned action or to the admissibility at trial of any proffered evidence, documentary or otherwise.

12. At the conclusion of this case when the time for the parties right to appeal has expired or been expressly waived in writing, all Protected Materials (and any physical or

electronic reproductions thereof) in the possession, custody, or control of a recipient party and the recipient party's attorneys must be destroyed. Protected Materials must be maintained in the regular course of business and in accordance with the document retention policies and practices of the recipient party's attorneys.

13. If any Protected Materials are used in any manner, by any person, or by representatives of any party, other than specific to this cause of action, such people who do so acknowledge that irreparable harm may occur such that the party harmed may pursue any and all legal remedies that may be available and shall be entitled to recovery of attorney fees and costs.

14. All Protected Materials remain property of the producing party. The recipient party and the recipient party's attorneys must appropriately safeguard Protected Materials.

15. If the parties do not agree how to handle Protected Materials at trial, the Court will direct how such materials shall be handled.

16. The foregoing is without prejudice to the right of any party to apply to the Court for a modification of this Order upon a showing of good cause.

17. The terms of this Order do not supersede and are subject to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence.



State of Iowa Courts

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SCHILLINGER

So Ordered

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Jeffrey Farrell, District Court Judge,  
Fifth Judicial District of Iowa