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IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

ARI ROBBINS,

Plaintiff,

v.

SWEDISH HEALTH SERVICES, INC.;  
SWEDISH PLASTICS AND AESTHETICS;  
PROVIDENCE HEALTH AND SERVICES;  
and MARY PETERS, MD.,

Defendants.

No. 17-2-32900-2 SEA

**MOTION FOR PROTECTIVE  
ORDER**

**I. RELIEF REQUESTED**

Ari Robbins (Mr. Robbins) is a University of Washington law student who was denied medical treatment and surgery by Dr. Mary Peters, Swedish Plastics and Aesthetics, Swedish Health Services, Inc., and Providence Health and Services (collectively “Swedish”) because he is transgender. Mr. Robbins is seeking a protective order against several subpoenas *duces tecum* that Swedish is planning to serve on the University of Washington School of Law, Country Doctor Community Clinic, Washington Apple Health, and Linea Cosmetic Surgery. Swedish is seeking:

- 1 1. Mr. Robbins' law school records including applicant records, student records,  
2 transcripts, billing and payment history, photos and memoranda (from his law  
3 school);
- 4 2. Mr. Robbins' insurance records including benefit statements, applications, health  
5 reports, service requests, patient and/or provider correspondence, billing and  
6 payment history, and memoranda (from Apple Health);
- 7 3. All of Mr. Robbins' medical records from his primary care provider (Country  
8 Doctor Community Clinic); and
- 9 4. All of Mr. Robbins' medical records from Linea Cosmetic Surgery (the facility  
10 that ultimately provided Mr. Robbins with the surgery denied to him by Swedish),  
11 including health reports, laboratory studies, correspondence, radiology films and  
12 reports, pathology reports, surgical reports, physical therapy records, billing and  
13 reports, pathology reports, surgical reports, physical therapy records, billing and  
14 payment history, photos, slides, and memoranda.  
15

16 Mr. Robbins' law school records have no bearing whatsoever in this healthcare  
17 discrimination matter. The medical and many of the insurance records sought by Swedish are  
18 privileged and Mr. Robbins has not waived that privilege. Further, the entirety of the medical and  
19 insurance records sought by Swedish have no bearing on this matter. Any records not already in  
20 Swedish's possession at the time of the denial of Mr. Robbins' surgery did not inform Swedish's  
21 decision to deny him care—their only purpose would be a *post hoc* rationalization of Swedish's  
22 actions and they are therefore not relevant. Moreover, Mr. Robbins has a legitimate privacy  
23 interest in protecting the confidentiality of his law school records, insurance records and his  
24 medical records. Attorneys for both parties met and conferred on this issue on March 1, 2018, and  
25  
26

1 were not able to reach a resolution. Mr. Robbins asks this Court to enter an order that prohibits  
2 Swedish from pursuing these records.

## 3 II. STATEMENT OF FACTS

4 Mr. Robbins is a 30-year-old man who is transgender. To treat his gender dysphoria,  
5 Mr. Robbins' primary care provider referred him to Swedish to obtain chest reconstruction  
6 surgery. Mr. Robbins consulted with Mary Peters, M.D., a plastic surgeon employed at Swedish  
7 about chest reconstruction surgery in December 2016. Dr. Peters informed Mr. Robbins that the  
8 surgery was a "simple procedure" and that she had provided this same surgical procedure to other  
9 transgender patients in the past. Dr. Peters showed Mr. Robbins a binder of examples of similar  
10 surgeries she had performed in the past.  
11

12 The chest reconstruction surgery was scheduled for March 15, 2017, so as to meet  
13 Dr. Peters' availability and not to conflict with Mr. Robbins' law school schedule.  
14

15 Three weeks before the scheduled surgery, Dr. Peters' patient care coordinator contacted  
16 Mr. Robbins to cancel the surgery. The coordinator explained that Dr. Peters "feels like she just  
17 does not have the expertise to take on the case." Mr. Robbins contacted Dr. Peters' office to  
18 obtain more information. Mr. Robbins was informed that the surgery was cancelled because it  
19 was a "transgender surgery" that required additional documents. Mr. Robbins informed the  
20 coordinator that the documentation claimed to be needed was irrelevant to the surgery that he was  
21 seeking and for which he had been scheduled. The coordinator agreed with Mr. Robbins' but did  
22 not re-schedule the surgery. Country Doctor, Mr. Robbins' medical provider, told him that it had  
23 received a fax from Swedish, which stated, "We regret to inform you after discussion with both  
24 Dr. Peters and the Plastics Manager, Dr. Peters has decided she does not have the expertise to take  
25 on Transgender patients."  
26

1 On February 13, 2018, attorneys for Swedish notified counsel for Mr. Robbins that they  
2 intended to subpoena Mr. Robbins' University of Washington law school records, his County  
3 Doctor medical records, his Linea Cosmetic Surgery medical records, and his Apple Health Care  
4 insurance records. Mr. Robbins objects to Swedish's subpoenas.

5 **III. STATEMENT OF ISSUES**

6 1. Whether the Court should grant a protective order prohibiting Swedish from  
7 serving a subpoena on Plaintiff's educational institution, the University of Washington law  
8 school.  
9

10 2. Whether the Court should grant a protective order prohibiting Swedish from  
11 serving subpoenas on Plaintiff's medical providers and Washington Apple Health.

12 **IV. EVIDENCE RELIED UPON**

13 Plaintiff Robbins relies upon the Declaration of Lisa Nowlin, and the attachments thereto,  
14 as well as the files and records herein.

15 **V. ARGUMENT OF COUNSEL**

16  
17 CR 26(c) expressly gives the superior court broad discretion to limit discovery in  
18 proceedings for protective orders and provides, in pertinent part:  
19

20 Protective Orders. Upon motion by a party or by the person from whom discovery  
21 is sought, and for good cause shown, the court . . . may make any order which  
22 justice requires to protect a party or person from annoyance, embarrassment,  
oppression, or undue burden or expense, including one or more of the following:

- 23 (1) that the discovery not be had; (2) that the discovery may be had only on  
24 specified terms and conditions, including a designation of the time or place; (3)  
25 that the discovery may be had only by a method of discovery other than that  
26 selected by the party seeking discovery; (4) that certain matters not be inquired  
into, or that the scope of the discovery be limited to certain matters; . . . .

1 As the Washington Supreme Court has noted, in drafting a protective order under CR 26(c),  
2 the trial court may order “that the discovery not be had” at all, or it may place conditions or  
3 limitations on the requested discovery — for example, by restricting the scope of inquiry. *T.S. v.*  
4 *Boy Scouts of America*, 157 Wn.2d 416, 424, 138 P.3d 1053 (2006) (quoting CR 26(c)(1)).

5 A party seeking a protective order must demonstrate good cause. Good cause for limiting  
6 discovery is established by showing the threat of any of the harms listed in the rule and that these  
7 harms can be avoided without impeding the discovery process. *See Rhinehart v. Seattle Times Co.*,  
8 98 Wn.2d 226, 256, 654 P.2d 673 (1982). “The trial court is inarguably in the best position to  
9 determine the nature and extent of the burdens and risks” in granting or limiting discovery. *Gillett*  
10 *v. Conner*, 132 Wn. App. 818, 826, 133 P.3d 960 (2006). It is within the trial court's discretion to  
11 fashion suitable protective orders. *See Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 777-78,  
12 819 P.2d 370 (1991); *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 556, 815 P.2d 798 (1991).

13 A trial court has broad discretion to fashion discovery orders, and these orders are  
14 reviewable only for an abuse of discretion. *See CR 26(c); Howell v. Spokane & Inland Empire*  
15 *Blood Bank*, 117 Wn.2d 619, 629, 818 P.2d 1056 (1991) (observing that, “[u]nder CR 26(c), a  
16 judge is given broad discretion in fashioning discovery orders in order to protect a person's  
17 privacy”).

18 In addition, CR 45, which sets out the rules for issuing subpoenas in civil cases, provides  
19 that the court, upon prompt motion, may quash or modify an unreasonable or oppressive  
20 subpoena, or a subpoena that requires disclosure of privileged or protected information. CR 45(c).

21 CR 26(b)(1) provides, “Parties may obtain discovery regarding any matter, not privileged,  
22 which is relevant to the subject matter involved in the pending action.” “‘Relevant evidence’  
23 means evidence having any tendency to make the existence of any fact that is of consequence to  
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1 the determination of the action more probable or less probable than it would be without the  
2 evidence.” ER 401.

3 **A. Mr. Robbins’ law school records have no bearing in this discrimination matter.**

4 Mr. Robbins’ law school records – including his law school application, student records,  
5 transcripts, billing and payment history, photos, and memoranda – have no bearing in this matter.  
6 He does not claim his educational program was disrupted by Dr. Peters’ refusal to perform chest  
7 reconstruction surgery. He does not claim that her discriminatory actions caused his grades to fall,  
8 his graduation to be delayed, or otherwise negatively impacted his career. Swedish is merely on a  
9 “fishing expedition” to see what it can find about Mr. Robbins in his private school records to  
10 which it is not entitled. *See Weber v. Biddle*, 72 Wn.2d 22, 29, 431 P.2d 705 (1967) (A party may  
11 object to a discovery request if it is overbroad, vague, or ambiguous, such as when the request is  
12 so broad that it may be reasonably interpreted to include irrelevant or undiscoverable  
13 information.)  
14

15  
16 **B. Mr. Robbins’ private and confidential medical and insurance records are privileged.**

17 Swedish seeks *all* of Mr. Robbins’ records from his primary care provider, surgeon and  
18 his insurance provider. Mr. Robbins’ medical records from his primary care provider and surgeon  
19 are privileged, and that privilege persists when the records are shared with an insurance provider.  
20

21 CR 26(b)(1) provides, “Parties may obtain discovery regarding any matter, not privileged,  
22 which is relevant to the subject matter involved in the pending action[.]” CR 45(c)(3)(A)(iii)  
23 states that a court shall quash or modify a subpoena if it “requires disclosure of privileged or other  
24 protected matter and no exception or waiver applies.” Washington protects confidential physician-  
25 patient (RCW 5.60.060(4)) and psychologist-patient (RCW 18.83.110) communications. *See*  
26

*Petersen v. State*, 100 Wn.2d 421, 429, 671 P.2d 230 (1983). Plaintiffs waive their physician-

1 patient privilege as to a relevant medical condition when they voluntarily put that condition at  
2 issue in a judicial proceeding. *See, e.g.; Carson v. Fine*, 123 Wn.2d 206, 213–14, 867 P.2d 610  
3 (1994) (“[A] patient voluntarily placing his or her physical or mental condition in issue in a  
4 judicial proceeding waives the privilege with respect to information relative to that condition.”).  
5 However, the waiver does not apply to all medical information about the patient, but rather is  
6 limited to information relevant to the condition at issue. *See id.*

7  
8 Here, Mr. Robbins has not waived the physician-patient privilege as to his medical  
9 records. Mr. Robbins has not placed a medical condition before the court but has rather brought a  
10 discrimination claim against Swedish for failure to provide a medical service. Further, even if the  
11 court was to find that Mr. Robbins had waived privilege as to medical records relating to gender  
12 dysphoria as it pertains to his chest reconstructive surgery, the waiver would be narrowly limited  
13 to just that – the chest reconstructive surgery. All other medical records would be privileged and  
14 would not be relevant to this case.

15  
16 Mr. Robbins is seeking emotional distress damages as a result of the discriminatory denial  
17 of a surgical procedure. To the extent Swedish may therefore have some limited access to any  
18 psychological records by way of a narrowly construed privilege waiver, Swedish is not seeking  
19 psychological records. *See Fitzgerald v. Cassil*, 216 F.R.D. 632, 634 (N.D. Cal. 2003). *Lodis v.*  
20 *Corbis Holdings, Inc.*, 172 Wn. App. 835, 855–56, 292 P.3d 779 (2013) (when a plaintiff puts his  
21 mental health at issue by alleging emotional distress, he waives his *psychologist-patient privilege*  
22 for relevant mental health records).<sup>1</sup> Rather they are seeking privileged medical records from Mr.  
23 Robbins’ primary care physician, his insurance provider, and Linea Cosmetic Surgery.  
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Dated this 8th day of March 2018.

*s/Susan Mindenbergs*

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**CERTIFICATE OF SERVICE**

I, Kaya McRuer, certify and declare that I am now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and am competent to testify as a witness. I am a Legal Assistant employed with the American Civil Liberties Union of Washington Foundation. On March 8, 2018, I served the within document(s):

- Motion for Protective Order
- Proposed Order

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- Via Facsimile
- Via Electronic Mail
- Via U.S. Mail
- Via Electronic Filing/Eservice

1 The foregoing statement is made under the penalty of perjury under the laws of the State of  
2 Washington that the foregoing is true and correct.

3 DATED this 8<sup>th</sup> day of March 2018.  
4

5 

6 Kaya McRuer, Legal Assistant  
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8 of Washington Foundation  
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IN THE SUPERIOR COURT OF WASHINGTON  
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ARI ROBBINS,

Plaintiff,

v.

SWEDISH HEALTH SERVICES, INC.;  
SWEDISH PLASTICS AND AESTHETICS;  
PROVIDENCE HEALTH AND SERVICES;  
and MARY PETERS, MD.,

Defendants.

No. 17-2-32900-2 SEA

**[PROPOSED] ORDER GRANTING  
PLAINTIFF’S MOTION FOR  
PROTECTIVE ORDER**

**[PROPOSED] ORDER**

Plaintiff filed a Motion for Protective Order against subpoenas *duces tecum* that Defendants intend to serve on University of Washington School of Law, Country Doctor Community Clinic, Washington Apple Health, and Linea Cosmetic Surgery.

The Court having reviewed Plaintiff’s Motion, the Declaration of Lisa Nowlin and the Exhibits attached thereto, Defendants’ Opposition, Plaintiff’s Reply, and the entire record herein, finds the proposed subpoenas to be unreasonable, oppressive, without merit, and to seek privileged information and documents. It is hereby:

1 **ORDERED** that Plaintiff's Motion for Protective Order is GRANTED; it is further

2 **ORDERED** that the proposed subpoena for the University of Washington School of Law

3 is hereby

4  quashed,

5  shall be modified to read: \_\_\_\_\_

6 \_\_\_\_\_; it is further

7 **ORDERED** that the proposed subpoena for Country Doctor Community Clinic is hereby

8  quashed,

9  shall be modified to read: \_\_\_\_\_

10 \_\_\_\_\_; it is further

11 **ORDERED** that the proposed subpoena for Washington Apple Health is hereby

12  quashed,

13  shall be modified to read: \_\_\_\_\_

14 \_\_\_\_\_; it is further

15 **ORDERED** that the proposed subpoena for Linea Cosmetic Surgery is hereby

16  quashed,

17  shall be modified to read: \_\_\_\_\_

18 \_\_\_\_\_.

19 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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The Honorable Susa Amini