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COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT FOURTH
DIVISION
CIVIL BRANCH

Kenneth B. Ain, M.D.
Plaintiff

v.

University of Kentucky, et al

Defendants

Case Number 2023-CI-03018

ORDER GRANTING PARTIAL SUMMARY JUDGMENT AND SETTING HEARING

This matter came before the Court on June 4, 2024, on Plaintiff's Motion for Partial Summary Judgment related to Plaintiff's Open Records Act, the University's Motion to Seal Exhibits, Motion to Reconsider, and Motion for an Accounting, and Plaintiff's Motion to Strike the University's Motion to Reconsider. The Court having reviewed the parties' briefs, and having heard oral argument on the respective Motions, and being otherwise sufficiently advised, hereby **ORDERS** as follows:

1. Defendants' unopposed Motion to Seal Exhibits is **SUSTAINED**.

2. Plaintiff's Motion for Summary Judgment on his Open Records Act claims is **GRANTED IN PART**. Accordingly, the Court **HEREBY FINDS** that there is no genuine issue of material fact whether: (a) there was a good faith effort by the University to gather or provide these records until after the service of Plaintiff's written discovery requests; (b) there is, and has been, a conscious disregard and willful withholding of records to create a substantial delay; and whether (c) the requests and possible review and production was not unduly burdensome on the University.

Accordingly, the Court **HEREBY FINDS** that there is no substantial controversy as to each of the elements necessary to grant Plaintiff's Motion for Partial for Summary Judgment: willful

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withholding, conscious disregard, and no undue burden. However, before the Court can set the applicable fine available under the statute, the Court must ascertain which records were subject to the Open Records Act Request but improperly withheld. Accordingly, the Court **ORDERS** that the parties meet and confer with regard to these records and attempt to agree upon the proper number of records that would fall within the calculation. If the parties cannot agree, Plaintiff and the University shall separately file, no later than July 3, 2024, their positions on the number of records they believe should excluded from the calculations and their justification for that position.

3. Defendants' Motion to Reconsider is **OVERRULED**, and Plaintiff's Motion to Strike Defendants' Motion is **SUSTAINED**. The Court finds that Defendants' Motion is untimely and premature, in that the Court has not yet issued a written order on the University's motion to dissolve the TRO and for clarification on the federal law National Practitioner Databank Reporting requirement.

4. This matter is **SCHEDULED** for an evidentiary hearing on **November 6, 2024, at 1:30 p.m.** on the University's Motion to Dissolve the TRO and Plaintiff's oral Motion for Conversion of the TRO to a Temporary or Permanent Injunction.

5. Defendants' Motion for an Order to Provide an Accounting is **OVERRULED IN PART**. In lieu of providing an accounting, Plaintiff's counsel shall secure, and deliver to the Court for safekeeping, as soon as possible, the binders of documents at issue in the Motion. Plaintiff's counsel will also prepare, and deliver to the Court for filing, an Affidavit detailing his actions in gathering, and delivering, these materials.

Dated this ___ day of July, 2024.



HON. JULIE MUTH GOODMAN
JUDGE, FAYETTE CIRCUIT COURT

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CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on this _____ day of July, 2024, via U.S. Mail, first class, to the following:

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Fayette Circuit Court Clerk

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