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| DISTRICT COURT, DENVER COUNTY, COLORADO |  |  |
| Court Address: Denver District Court  1437 Bannock St.  Denver, CO 80202  (720) 865-8301 | D F C | ATE FILED: August 5, 2015 9:56 AM ILING ID: 942046B4547C1  ASE NUMBER: 2015CV31709 |
| Plaintiff: ROBERT ABRAMS |  |  |
| v. |  |  |
| Defendant: SHAWN BEESON |  | **COURT USE ONLY** |
| Attorney for Plaintiff: | | Case Number: 2015CV31709 |
| ABRAMS & ASSOCIATES, LLC  Robert Abrams  700 17th St., Suite 650  Denver, CO 80202 | | Division: 409 |
| Phone #: (303) 322-4115  Fax #: (303) 333-0708  E-mail: [Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net) Atty. Reg. #: 37950 | |  |
| **PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION *IN LIMINE* TO EXCLUDE PLAINTIFF’S PROPOSED EXHIBITS 1, 2, 4, 5, 11 AND 14** | | |

COMES NOW, Plaintiff Robert Abrams, through his attorneys at Abrams & Associates, LLC, and hereby files his Response to Defendant’s Motion *in Limine* to Exclude Plaintiff’s Proposed *Exhibits 1, 2, 4, 5, 11 and 14* (“Amended Motion”). In support thereof, Plaintiff state and allege as follows:

# INTRODUCTION

1. Plaintiff represented Defendant as his lawyer nearly three years ago in a personal injury lawsuit. At the end of the representation, as stated in this court, Defendant became violent and irate, demanded his files back, caused a scene in Plaintiff’s building and terrified Plaintiff’s paralegal, Brittany Hayes. Ms. Hayes stated in court, she was so afraid of Defendant at that time, she locked the office door for several days in fear of Mr. Beeson.
2. As confirmed by Plaintiff’s motion for protective order, nearly three years have passed since the fore mentioned incidents, where Plaintiff has not seen, nor heard from Defendant in that time. Then, upon the very first encounter with Defendant, he accosted Abrams in the street and publically called him a “piece of shit” and a “motherfucker.”
3. Subsequent, about 4-6 weeks later, again in the very next encounter between these parties, Defendant again called Abrams a “motherfucker” in public, then followed him into his garage and violently attacked him from behind. Abrams seeks to permanently end these attacks through this Court and seeks to introduce evidence that shows Defendant did the acts complained of herein and unless restrained will do them again.
4. Plaintiff Robert Abrams (hereinafter as “Plaintiff” or “Abrams”) filed his Verified Complaint and Motion for Protection Order against Defendant on May 14, 2015. Plaintiff appeared before this Court May 20, 2015 on his Motion for Protection Order. On the same day, the Court issued a Temporary Protection Order *ex-parte.*
5. Plaintiff asserts, as a direct and proximate result of Defendant’s violent conduct and battery perpetrated against Plaintiff, Mr. Abrams fears for his physical safety around Defendant and therefore seeks to make the Court’s Temporary Protection Order permanent.
6. The Court can note, Plaintiff filed a motion to continue the August 13th hearing until a date after September 9, 2015, when his criminal trial is scheduled, as he is allowed one continuance by statute under C.R.S. § 13-14-102(9)(b).
7. Defendant filed a Motion *in Limine* prior to the July 16th hearing, which the Court permitted him to amend and gave Plaintiff until August 6, 2015 to respond to same. In his Amended Motion, filed on July 26, 2015, Defendant seeks to exclude extremely relevant and admissible evidence proffered by Plaintiff to prove his need for a permanent protection order against Defendant.
8. As outlined herein, Plaintiff’s *Exhibits 1, 2, 4, 11 and 14* are admissible and relevant and should not be excluded from the permanent protection order hearing.
9. Defendant intentionally omitted and misstated the law in two areas of his Amended Motion, which as read, would mislead the Court:
   1. Misquoted Rule 1.9 by omitting “as these Rules would permit.”
   2. Stating in paragraph 18 of his Amended Motion, “None of the listed exceptions [Rule 1.6] is applicable here,” which is patently false as outlined below.

# LEGAL AUTHORITY

1. C.R.S. § 13-14-106. Procedure for permanent civil protection orders

(1)(a) ….If upon such examination the judge or magistrate finds by a preponderance of the evidence that the respondent has committed acts

constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts or acts designed to intimidate or retaliate against the protected person, the judge or magistrate shall order the temporary civil protection order to be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. A finding of imminent danger to the protected person is not a necessary prerequisite to the issuance of a permanent civil protection order….

Here, Plaintiff must prove that Defendant committed the acts complained of herein and will continue to commit acts to retaliate against Plaintiff if not restrained. Plaintiff needs *Exhibits 1, 2, 4, 11 and 14* to show the continuing pattern of violent behavior and retaliation necessary to prove the need for a permanent protection order.

1. Colorado Rules of Evidence Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Here, Plaintiff offers evidence of prior crimes and acts of the Defendant to show his motive, intent, preparation and planning in the assault of Plaintiff in this case.

1. Rule 1.6. Confidentiality of Information
2. A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
3. A lawyer **may** reveal information relating to the represent- ation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;……….

(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client…

Here, Plaintiff, Defendant’s former attorney, is revealing information related to his representation precisely for the prevention of substantial bodily harm, which already occurred on May 13, 2015. Plaintiff seeks a permanent protection order to prevent further injury and to help establish his claims and defenses in a lawsuit between him and his former client. Because Rule

1.6 precisely addresses these allowances, the *Exhibits* are admissible under these Rules.

# ARGUMENT

1. Plaintiff’s burden for making a temporary protection order permanent requires a preponderance of the evidence that unless restrained, Defendant will continue to commit such acts to retaliate against the protected person. Each one of the exhibits at issue in Defendant’s Amended Motion is offered to show Defendant will continue to commit such acts to retaliate against Plaintiff if unrestrained.
2. Plaintiff offers the exhibits at issue in order to show Defendant’s motive, plan, preparation and knowledge in attacking Plaintiff, as he admittedly retaliated against Abrams for an alleged debt of $30,000. As outlined herein, each exhibit at issue is both admissible and relevant under C.R.E. 404(b) and Colo. RPC 1.6 to show Defendant’s motive, intent and plan.
3. Plaintiff stipulates *Exhibit 5* is withdrawn and therefore moot and does not address *Exhibit 5* herein.

# Exhibits 1, 2, 4, 11 and 14 Are Admissible Under C.R.E. 404(b).

1. Plaintiff does not seek to introduce evidence to show Defendant’s character as barred by C.R.E. 404(a). Rather, Plaintiff seeks to prove Defendant’s motive for and intent to cause injury to Plaintiff under C.R.E. 404(b).
2. As noted by Defendant in his Amended Motion, Plaintiff offers *Exhibits 1 and 4*, Defendant’s Denver CARES medical records from 2009 and 2011. These records are relevant because they show Defendant’s harassing and violent nature, which in turn, supports the violence of his motive to plan and assault Plaintiff.
3. Plaintiff introduces Defendant’s medical information to show his prior violent conduct as allowed by Rule 404(b), to the extent this behavior is a pattern which will continue if not restrained as necessary under C.R.S. § 13-14-106. It is relevant under C.R.E. 401 because it makes a fact of consequence more or less likely.
4. Plaintiff’s *Exhibit 2* is an excerpt from the deposition of Paul Rose, which was conducted during the course of Defendant’s representation by Plaintiff. This exhibit goes to motive under C.R.E. 404(b). Plaintiff is establishing Defendant is a violent and abusive man with motive and intent to retaliate against Plaintiff. Specifically, while sober and upon release from CARES, while an attendant tried to assist him, he verbally abused the attendant as driven by his anger. This pattern of behavior will lead to further bodily injury to Plaintiff if Defendant is not permanently restrained.
5. Defendant’s motive for attacking Plaintiff is made clear by his own statements that Abrams allegedly owes him $30,000. Therefore, these exhibits offered under C.R.E. 404(b) are relevant to the retaliation as defined in C.R.S. § 13-14-106.
6. Further, Defendant not only had motive, but also opportunity, intent, preparation, plan and knowledge. Defendant stalked Plaintiff, as exhibited by his verbal harassment of Plaintiff on the street in April, followed by the fact he knew where Plaintiff worked and in which garage he parked. This gave him the opportunity to plan and prepare for the May 13th attack.
7. Factually, on May 13, 2015, on the very next encounter, Defendant saw Plaintiff in the street, immediately followed him to his garage, then provoked him into a confrontation by calling him a “motherfucker.” All evidence Plaintiff seeks to introduce herein is in support of Plaintiff’s claim of Defendant’s violent anger that drove his plan to attack Plaintiff, upon the next encounter between the parties hereto.
8. Plaintiff’s *Exhibit 11* is Defendant’s criminal record. Defendant’s prior assaults and other crimes as offered are proof of Defendant’s motive and plan. C.R.E. 404 states, “…other crimes evidence may be used to prove motive under Rule 404(b)….Proof of the other crimes may help establish why this particular person is likely to have committed the crime.” Here, Plaintiff will use *Exhibit 11* to help establish that Defendant committed acts constituting grounds for issuance of a civil protection order as required under C.R.S. § 13-14-106.
9. Defendant’s plan to verbally assault Abrams, including direct statements he made to eye witnesses to corroborate his false report, permits these exhibits under C.R.E. 404(b). *United States v. Cassell*, 292 F.3d 788 793 (D.C. Cir. 202) (to prove unlawful possession, evidence that defendant possesses “the same or similar things at other times is often quite relevant to his knowledge and intent with regard to the crime charged”). Here, Defendant’s prior assaults and interference with police arrests show Defendant previously planned and assaulted other victims in the same or similar manner as Defendant attacked Plaintiff on May 13, 2015.
10. Defendant stipulates, prior felonies and misdemeanors are not admissible under

C.R.S. § 13-90-101. However, Plaintiff is not entering the convictions into evidence. Here, Plaintiff submits *Exhibit 11*, as allowed under C.R.E. 404(b) to show his motive and plan. C.R.E. 404(b), “other crimes evidence may be used to prove motive under Rule 404(b).” Specifically, Plaintiff shows his prior assaults are his anger that fueled his motive to retaliate against Plaintiff for his alleged $30,000 due. At the very least, *Exhibit 11* goes to weight not admissibility.

1. Contrary to Defendant’s statements, Plaintiff is not prohibited from introducing specific instances of conduct, as such is not offered to prove Defendant’s character, but rather Defendant’s motive, intent, preparation, plan and knowledge as permissible under C.R.E. 404(b).

# Exhibits 1, 2, 4 and 14 Are Admissible Under Colo. RPC 1.6.

1. Plaintiff represented Defendant in a civil lawsuit in 2011-2012, but he is not barred from submitting evidence in this case obtained during the course of that representation as asserted by Defendant under Colo. RPC 1.9.
2. Defendant’s Amended Motion conveniently left out the most important part of Rule 1.9, which states in full:
3. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
   1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

Here, Plaintiff seeks to introduce evidence, “as these Rules permit,” under Rule 1.6.

1. Plaintiff seeks to introduce medical records *(Exhibits 1 and 4),* a deposition transcript except *(Exhibit 2)*, and medical releases *(Exhibit 14),* all which were obtained during Plaintiff’s representation of Defendant.
2. Although Rule 1.9(c) prohibits the use of information relating to representation, simply because a lawyer represented a client does not preclude him from using information about that client when it is permitted under Colo. RPC 1.6.
3. Defendant dismisses the exceptions under Rule 1.6 as he flatly and incorrectly states, “None of the listed exceptions is applicable here.” In fact, two of the six exceptions under Rule 1.6 are highly relevant to this case. Rule 1.6 states, “A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary

(1) …to prevent substantial bodily harm; or (6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved.” *See* Colo. RPC 1.6.

1. Here, Defendant assaulted Plaintiff, and *Exhibits 1, 2, 4, 11 and 14* are offered to show Defendant’s continuing pattern of violent behavior, which is likely to lead to continuing bodily harm to Plaintiff, as defined in Rule 1.6 and C.R.S. § 13-14-106. Plaintiff believes revealing this information, obtained during representation, is necessary and allowed under Rule 1.6, to prevent future bodily harm.
2. Additionally, presenting the information is necessary under Rule 1.6 to show Defendant had motive and plan to cause bodily harm to Plaintiff under Rule 404(b). Plaintiff must be allowed to disclose the information under R. 1.6 to properly admit it under Rule 404(b).
3. Finally, the evidence offered against Defendant is “to establish a claim or defense on behalf of a lawyer in a controversy between the lawyer and the client.” Plaintiff must prove his claim that making the temporary protection order permanent against Defendant is necessary. To do so, he must introduce *Exhibits 1, 2, 4, 11 and 14*, all which were obtained during the course of representation; such exception is permitted under Rule 1.6.

# Defendant Waived His Right to Denver CARES Medical Records.

1. Defendant signed several medical releases, three of which are offered as Plaintiff’s *Exhibit 14,* thereby waiving his right to protection of his medical records with Denver CARES, *Exhibits 1 and 4.*
2. Defendant attempts to argue that because the releases are expired, Plaintiff cannot use the records obtained from those releases. Plaintiff does not dispute these releases expired, but Plaintiff is not seeking to obtain new records under these releases. Instead, Plaintiff seeks to introduce records obtained when Defendant authorized Plaintiff to receive such records during representation.
3. Plaintiff may therefore use the privileged information as allowed in Colo. RPC

1.6. “to establish a claim or defense on behalf of a lawyer in a controversy between the lawyer and the client.” Defendant fails to understand the medical releases, although expired, are valid as they relate to information obtained during the civil case where they were disclosed.

1. Plaintiff does not dispute this information is not “generally known information” as specified under Colo. RPC 1.9(c). However, revealing privileged information such as these medical records is allowed under Colo. RPC 1.6. to prove a claim or defense between the parties. Such medical information is now offered to prove motive and intent as defined in C.R.E. 404(b). Rule 1.6 allows for the disclosure of this information acquired during Plaintiff’s representation of Defendant as it now relates to the threat of bodily harm to Plaintiff.
2. Here, Defendant voluntarily authorized the disclosure of his health information in prior litigation to be used in the prosecution of his case. Defendant testified in deposition to the facts contained in police reports, expert reports, CARES reports, doctor reports and treatment thereto, and numerous other documents, all under his authorization to release and waive his medical privileges under HIPAA. Thus, Defendant waived his disclosure protection.
3. A person waives the privilege when the person entitled to the protection of the statute voluntarily makes public matters of which a disclosure without his consent is prohibited. *Conyers v. Massa*, 512 P.2d 283, 284, 1973 Colo. App. LEXIS 895, \*3-4 (Colo. Ct. App. 1973) (Citing 97 C. J.S. Witnesses § 310). Defendant’s waiver was voluntary and the releases in *Exhibit 14* all state that “re-disclosure may occur and protection under HIPAA no longer applies.”
4. When the patient authorizes that the confidential information become public, e.g, at a public trial, the reason for the privilege ceases to exist. *Fearnley v. Fearnley*, 98 P. 819 (Colo. 1908); *Sholine v. Harris*, 120 P. 330 (1912); *Epstein v. Pennsylvania R.R. Co*., supra; *Ryan v. Metropolitan Life Ins. Co.* 30 S.W. (2d) 190, 194 (Mo. App.). *U.S. v. Bump,* (privilege is waived where attorney reveals information with client's consent). Cf., *Riss & Co. v. Galloway*, 114 P.2d 550 (1941). Here, Defendant signed releases with the intent to make the medical records public at trial.
5. Although a patient has a right to revoke a signed authorization, Defendant’s right does not apply to previously disclosed information. Denver Health’s authorization form clearly states, “The revocation will not apply to information that has already been released in response to this authorization.” *Exhibit 14.* Here, Plaintiff waived his rights to confidentiality of his CARES records when he signed the waiver and failed to revoke it before such records were disclosed.
6. The court reasoned that since the defendant had previously waived any privilege regarding his medical information, any privilege that may have been protected has been waived in the subsequent trial. *Metropolitan Life Ins. Co. v. Kaufman*, 87 P.2d 758, 760, (1939). Here, Defendant already waived his rights to the protection of his CARES records, and therefore, they are no longer protected in this subsequent case.
7. Therefore, the only issue Defendant could raise as to the medical records and releases in *Exhibits 1, 4 and 14* concerns Rule 1.9(c), but Plaintiff articulated why the Rule 1.6 exceptions are applicable here. No additional waiver between Plaintiff and Defendant is necessary to admit this evidence.

# CONCLUSION

Plaintiff has a history with Defendant, as his prior counsel, of Defendant’s discontent. Trial testimony showed his hostile nature, belligerence and rage toward Plaintiff and Ms. Hayes. Plaintiff brought Defendant into Court under a Verified Complaint and Motion for Protection Order. The Court granted Plaintiff a Temporary Protection Order, which Plaintiff seeks to make permanent. Plaintiff seeks to introduce *Exhibits 1, 2, 4, 11 and 14* at the next hearing on permanent protection order. Plaintiff’s offered exhibits consist of Defendant’s medical records and releases, an excerpt from a deposition transcript of Paul Rose and Defendant’s criminal history. All of the exhibits at issue are both relevant and admissible. Plaintiff needs to introduce these exhibits to prove Defendant’s motive, intent and plan in his assault on Plaintiff. Therefore, Plaintiff will offer the exhibits under C.R.E. 404(b) as allowed by the Rules of Evidence. Colo. RPC 1.6 further allows the disclosure of privileged information obtained during representation, as there is a dispute between a lawyer and client and Plaintiff attempts to prevent bodily injury. Further, Defendant waived his right to confidentiality under HIPAA when he signed medical releases for his CARES records during Plaintiff’s representation of him. Each of these exhibits will aid Plaintiff in proving the need for a permanent protection order under C.R.S. § 13-14-106, and Plaintiff will be greatly prejudiced if not permitted to use his relevant and admissible evidence. Plaintiff requests the Court allow Plaintiff to introduce his *Exhibits 1, 2, 4, 11 and 14* at the parties’ next hearing on permanent protection order.

WHEREFORE, Plaintiff Robert Abrams respectfully requests this Court deny Defendant’s Amended Motion *in Limine* to Exclude Plaintiff’s *Proposed Exhibits 1, 2, 4, 11 and 14;* and, for such other relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED this 5th day of August, 2015.

ABRAMS & ASSOCIATES, LLC

*/s/ Robert Abrams*

Robert Abrams Attorney at Law

*(Original signature on file at Abrams & Assoc., LLC, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 5th day of August, 2015, served via ICCES a true and correct copy of the PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION IN LIMINE TO EXCLUDE PLAINTIFF’S PROPOSED EXHIBITS 1, 2, 4, 5, 11 AND 14 upon:

Michael P. Boyce

Law Office of Michael P. Boyce, PC

3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209

*Attorney for Defendant*

*/s/ Brittany Hayes*

Brittany Hayes, Paralegal

*(Original signature on file at Abrams & Assoc., LLC, pursuant to C.R.C.P. 121 § 1-26)*