IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303

SUMMONS

Revolution Georgia LLC et al.
Plaintiff,

vs.

FFO GA Holdings, LLC et al.
Defendant

Case No.: 2022CV370799

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file electronically with the Clerk of said Court at https://efilega.tylerhost.net/ofsweb (unless you are exempt from filing electronically) and serve upon plaintiff's attorney, whose name and address is:

Gerald Weber
P.O. Box 5391
Atlanta, GA 31107

Joy Ramsingh
1037 Marion Oaks Ct
Macon, GA 31216

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service; unless proof of service of this complaint is not filed within five (5) business days of such service. Then time to answer shall not commence until such proof of service has been filed. **IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

This 9/28/2022 day of _____, 20__

Honorable Cathelene "Tina" Robinson
Clerk of Superior Court
By _____
Deputy Clerk

To defendant upon whom this petition is served:
This copy of complaint and summons was served upon you _____, 20_____

Deputy Sherriff

Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum is used

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE:

REVOLUTION GEORGIA LLC,
ASPIRE MEDICAL PARTNERS LLC,
GA BIOSCIENCE RESEARCH INC.,
CURALEAF GA HOLDINGS LLC,
PEACH STATE MEDICINALS LLC,
PURE BEAUTY GA LLC,
CUMBERLAND CURATIVE LLC,
SYMPHONY MEDICAL LLC,
PURE PEACH ORGANIC INC.,
ACC LLC, PEACH HEALTH
ALTERNATIVES LLC,
HARVEST CONNECT LLC,
SILVERLEAF HEALTH ALTERNATIVES
INC., and
REMEDIUM LIFE SCIENCE OF GEORGIA
LLC,

Petitioners,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC;
and TREEVANA REMEDY, INC.,

Respondents.

2022CV370799

Case No. _____

NONPARTY GEORGIA FIRST AMENDMENT FOUNDATION'S MOTION TO UNSEAL (IN THE NATURE OF AN APPLICATION FOR INTERLOCUTORY REVIEW)

The Georgia First Amendment Foundation requests that this Honorable Court review and amend an administrative order placing a blanket seal on medical cannabis court records, under Uniform Superior Court Rule 21 and Georgia's common law and constitutional right of access.

In support, the Foundation states as follows:

1. Rule 21, which governs access to court records, provides that any person, at any time, may challenge an order limiting access to court records by filing an interlocutory application[1] with the appellate court that has jurisdiction to hear the appeal. Ga. Unif. Super. Ct. R. 21.4-5; *see also* O.C.G.A. § 50-13-19(b) (providing for this Honorable Court's appellate jurisdiction and venue); O.C.G.A. § 50-13-19(h) (providing that an appeal is proper when an administrative decision is made upon unlawful procedure or other error of law).
2. Upon notice and a hearing, the reviewing court may amend the order limiting access to court records, for good cause. Ga. Unif. Super. Ct. R. 21.5.
3. The standard of review as to the issue of limiting access to court records is abuse of discretion. *See Savannah Coll. of Art & Design v. Sch. of Visual Arts, Inc*., 270 Ga. 791, 791 (1999).

BACKGROUND

4. In April 2019 the General Assembly passed "Georgia's Hope Act," which authorizes the Georgia Access to Medical Cannabis Commission to oversee the regulated licensing of limited, in-state cultivation, production, manufacturing, and sale of low-THC oil as well as dispensing to registered patients on the state's Low-THC Oil Registry. *See* O.C. G. A. § 16-12-200 *et seq*.

[1] Georgia's Supreme Court declared that litigants seeking appellate review should style their Uniform Superior Court Rule 21 motions as applications for interlocutory appeal, to avoid creating the equivalent of a direct action where the Supreme Court would otherwise exercise its discretion to hear a matter. *See In re Atlanta J.-Const.,* 269 Ga. 589 (1998). It is unclear whether these instructions extend to situations where there is appeal as of right, but in an abundance of caution, this matter is styled in accordance with the Court's guidance. Nevertheless, due to Rule 21's separate procedural framework, these appeals are not subject to appellate timeliness or certification requirements. *Merch. L. Firm, P.C. v. Emerson*, 301 Ga. 609, 612 n. 2 (2017) ("…although a person not a party to an underlying case must file an application for review, that person need not follow the interlocutory procedures provided by O.C.G.A. § 5-6-34 (b)").

5. Given that medical cannabis was previously inaccessible in Georgia and the fact that the Commission's activities are funded by Georgia's taxpayers, all aspects of the Hope Act's implementation are of elevated interest to the public and the media.
6. Several legal protests emerged from the Commission's licensing of medical cannabis dispensaries. Upon information and belief, several of these disputes were docketed at No. 2226123-OSAH-GMCC-PL-60-Howells in the Office of State Administrative Hearings.
7. During that action, several parties moved to seal the record in that matter. *See* Ex. A.
8. The seal was formally opposed by at least one party to the case. *See* Ex. B.
9. Although the seal was opposed and the records are clearly of significant public interest, the administrative law judge issued an order sealing the entire record— without holding a hearing on that issue. *See* Ex. C.
10. The Foundation submitted an Amicus Curiae brief relating to the seal. *See* Ex. D. Just after, the Foundation learned that the OSAH had issued an order sealing the record, foreclosing the opportunity for the Foundation to provide its perspective.
11. The Foundation advocates for the rights of citizens, journalists, and public servants to gather information about the operation and performance of government institutions.
12. The Foundation is a nonpartisan, nonprofit coalition.
13. Along with most coalitions in other states, it is a member of the National Freedom of Information Coalition, and it is the only nonprofit organization in the state of Georgia dedicated to advancing access to public information.
14. Its members and leadership include some of Georgia's finest journalists, media organizations, attorneys, and citizens.

15. For almost thirty years, the Foundation has helped journalists access public information as they carry out their constitutional function. Part of this important mission includes supporting access to public information, including access to court records. Without access to information of public interest, the press cannot fulfill its obligation to inform the public.
16. The Foundation has no legal interest in the substance of the licensing protests.
17. This Motion merely asks this Court to address the narrow issue of whether access to these court records was properly limited.

ARGUMENT

An important medical cannabis dispute in the Office of State Administrative Hearings has been shrouded with secrecy—a blanket seal was imposed without a hearing, without findings of fact necessitating closure, and without consideration to common law and procedural rules governing access to court records.

Although the informal administrative setting permits relaxation of procedural rules to facilitate resolution, the Administrative Rules of Procedure instruct administrative law judges to refer to the Uniform Rules for Superior Courts, and the common law right of access to court records cannot be ignored. *See* OSAH Administrative Rule of Procedure 616-1-2-.02(3).

Several parties filed a cursory, single paragraph argument requesting a blanket seal of the record. *See* Ex. A. Without a hearing, the OSAH disregarded the opposition to sealing the record (including an opposing brief, its argument, and citations) and immediately issued an order denying access. The order does not reflect any consideration of the longstanding presumption of access to court records in this state. *See* Ex. C.; *cf.* Ga. Code Ann. § 50-13-41(c) ("Every

decision of an administrative law judge shall contain findings of fact, conclusions of law, and a disposition of the case.")

The Hope Act provides some limitations on accessing medical cannabis records under the Open Records Act. *See* O.C.G.A. § 16-12-220. But it does not address judicial records, it does not provide a mechanism to seal judicial records, it does not address judicial proceedings, and it does not provide a mechanism to close judicial proceedings to the public. *See id*. The public interest in these records and the media's interest in informing the public demand immediate interlocutory review of this seal.

I. OSAH's Errors of Law

The order provides:

> To the extent the respondents seek the record in these matters to be exempt from open records requests, the motion is GRANTED. Pursuant to Georgia Code Section 16-12-220, these matters[2] have been designated as confidential. Accordingly, any documents submitted or filed, any transcripts, or recordings are not subject to the Georgia Open Records Act and therefore will not be publicly disclosed. Furthermore, the hearing in these cases and in all cases referred to the Office of State Administrative Hearings ("OSAH") by the Georgia Access to Medical Cannabis Commission ("Commission") will be closed to the public, and to non-parties, their representatives, and their counsel.

There are three separate legal processes improperly comingled: (1) obtaining court records under Rule 21 and common law, (2) obtaining public records through the Open Records Act, and (3) gaining physical or virtual access to Georgia's court proceedings under Rule 22 and common law.

The first error is the substitution of the Open Records Act for the common law and procedural rules governing access to the courts. The process for sealing court records is dictated by Rule 21, not the Open Records Act or any statutory exemption to it. As a general rule, the

[2] To the extent that the term "matters" refers specifically to legal proceeding(s), there is no mention of closed legal proceedings in the section of the Hope Act cited by the lower court.

Open Records Act does not apply to judicial agencies. *See Fathers Are Parents Too Inc. v. Hunstein,* 202 Ga. App. 716 (1992). So even if the Hope Act cuts off access to some records under the Open Records Act, that limitation is distinct from sealing court records under common law and procedural court rules.

There are two additional issues—ripeness and jurisdiction. For the OSAH to come to the legal conclusion that the Open Records Act did not apply to the documents in its case record, there would need to be an underlying question related to the record's accessibility under the Open Records Act, which there was not. *See In Int. of I.B.,* 219 Ga. App. 268, 270 (1995) ("A controversy is justiciable when it is definite and concrete, rather than being hypothetical, abstract, academic, or moot.") Nor would there ever be, because only a superior court would review an Open Records Act dispute, even if the request sought records from OSAH. *See* O.G.C.A § 50-18-73(a) (vesting jurisdiction as to Open Records Act enforcement actions in the superior courts).

Administrative Rule of Procedure 616-1-2-.23 (Record of Hearings) presumes that the administrative hearing record "shall be available to the public, except as provided by law according confidentiality." While the administrative procedural rule lacks a specific structure for determining whether the record should be closed, Uniform Superior Court Rule 21 sets forth instructive procedures that must be followed before records may be sealed.[3] *See In re Motion of the Atlanta Journal-Constitution*, 271 Ga. 436, 437 (1999) ("…courts may restrict or prohibit access to court records only if they do so in compliance with the requirements of Rule 21.").

[3] Administrative Rule of Procedure 616-1-2-.02(3), which governs OSAH hearings, provides that the ALJ may refer to the Uniform Rules for the Superior Courts to resolve procedural questions that are not addressed by the APA, other applicable law, or the Administrative Rules of Procedure.

Although court rules indicate that access to court records is presumed, Georgia's fierce favor for open courtrooms and records did not originate with procedural rules. The citizen's ability to access court records and proceedings flows from Georgia's Constitution, and has been interpreted broadly by the Georgia Supreme Court:

> [O]ur court has breathed life into some old words that have lain dormant within our Constitution for most of their century old existence. The words are: "Public officers are the trustees and servants of the people and are at all times amenable to them." We have established that this is no empty phrase, but an obligation that is enforceable in a court of law. Public men and women, above all others, must act in good faith. Neither facile excuse nor clever dissimulation can serve in the stead of duty faithfully performed. Because public men and women are amenable "at all times" to the people, they must conduct the public's business out in the open.

Davis v. City of Macon, 262 Ga. 407, 407–08, (1992) (Weltner, J. concurring) (citing GA. CONST. Art. 1, Sec. 2, Para. I (1983)).

Because of this constitutional underpinning, the presumption of access to court records has long existed in Georgia's common law. *Merch. L. Firm, P.C. v. Emerson,* 800 S.E.2d 557, 561 (Ga. 2017) (reconsideration denied) ("The right of access to court records under court rule is coextensive with the common law right of access to court proceedings.") "The aim of this presumption is to ensure that the public will continue to enjoy its traditional right of access to judicial records, except in cases of clear necessity. To this end, the presumptive right of access includes pre-judgment records in civil cases and begins when a judicial document is filed." *Atlanta Journal v. Long*, 258 Ga. 410, 413–14 (1988). This presumption may be overridden only "in cases of clear necessity." *Id.* at 413. The public's ability to access court records is "an essential component of our system of justice" and "is instrumental in securing the integrity of the process." *F.T.C. v. AbbVie Prod. LLC,* 713 F.3d 54, 62 (11th Cir. 2013) (quoting *Chi. Trib. Co. v. Bridgestone/Firestone, Inc.,* 263 F.3d 1304, 1311 (11th Cir.2001) (*per curiam*)). This enduring principle is at its most vulnerable when court records are being sealed, which is

why Georgia courts have robust procedures for ensuring that the public's interest is carefully considered and weighed against any private interest. This constitutional and common law right of access to court records aligns perfectly with the procedural framework of Rule 21.

The Georgia Supreme Court has held that when a lower court "fails to hold a hearing on whether to seal a record or fails to make findings of fact concerning whether the privacy interests at stake outweigh the public's interest in access to records, an order sealing a record *must* be reversed on appeal." *Wall v. Thurman,* 283 Ga. 533, 535 (2008) (emphasis added); *see also BankWest, Inc. v. Oxendine,* 266 Ga. App. 771, 779 (2004). Both reversible errors are present here: no hearing was held and no balancing test was conducted before the seal.

The third prong of the order addresses access to the OSAH hearings. The OSAH ordered that the hearings in these cases must be closed to the public *without any party requesting that it do so*.[4] Remarkably, while the Hope Act does contain some limitations for the dissemination of records under the Open Records Act, it provides no guidance or language relating to closing court proceedings to the public.

Georgia's Uniform Superior Court Rule 22(A) provides:

> Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public.

"[Georgia's Supreme Court] has sought to open the doors of Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open

[4] OSAH has recognized that Georgia's interest in "public trials that are open to the press and public" extends to proceedings before it. *See Ga. Composite Medical Board v. Dodds, M.D.*, OSAH-CSBME-PHY-1444768-33-Malihi (Apr. 30, 2014) (granting CBS News's Rule 43 motion to record and broadcast portions of physician disciplinary hearing not involving patient information); *see also Rowan et al. v. Greene*, 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Apr. 14, 2022) (granting media access to administrative hearings).

courtrooms are a sine qua non of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society." *R. W. Page Corp. v. Lumpkin*, 249 Ga. 576, 576 n.1 (1982). The Georgia Court of Appeals has similarly expressed that "[p]ublic access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason." *Atlanta Journal v. Long*, 258 Ga. 410, 411 (1988).

Although federal First Amendment precedent upholds the importance of access to court proceedings, "Georgia law . . . is more protective of the concept of open courtrooms than federal law." *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 578 (1982). Indeed, "[a] Georgia trial court judge … [has] less discretion than his federal counterpart because our constitution commands that open hearings are the nearly absolute rule and closed hearings are the rarest of exceptions." *Id*. at 579; *see also* Uniform Superior Court Rule 22(A) (recognizing no distinction between criminal and civil court proceedings).

The fact that the press and the public were not given access to the hearings in this matter underscores the need for the record to be unsealed, so that some semblance of transparency can be had in regard to this action.

II. There is No Mechanism to Seal Court Records Within the Hope Act

Contrary to the assertions of those in favor of the seal, there is no language in the Hope Act that contemplates filing court records under seal. O.C.G.A. § 16-12-220(a).

The Hope Act provides, in pertinent part:

> (a) All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commission pursuant to the activities conducted pursuant to this part, other than information published in an official commission report regarding the activities conducted pursuant to this article, shall be confidential data and shall not be subject to [the Open Records Act]; provided, however, that any contract,

memorandum of understanding, or cooperative endeavor agreement entered into by the commission pursuant to this article shall be subject to [the Open Records Act].

(b) In no event shall the commission disclose any information that would reveal the identity or health information of any registered patient or violate [HIPPA].

Ga. Code Ann. § 16-12-220. The language of the Hope Act refers directly to the Open Records Act. *See id*. It does not refer directly to court records or proceedings. *See id*.

That certain information is of a confidential nature and is not subject to the Open Records Act does not mean that there is no interest that would not outweigh that confidentiality, or that there is no context in which the information might become public. *See, e.g.,* Ga. Unif. Super. Ct. R. 21.2 (providing for a balancing test that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.) It is the nature of court proceedings that confidential information will be used, debated in front of juries, and made public through its use in litigation:

> By their nature, civil lawsuits quite often cause litigants to experience an invasion of privacy and resulting embarrassment, yet that fact alone does not permit trial courts to routinely seal court records. In an order sealing a court record, a trial court must set forth factual findings that explain how a privacy invasion that may be suffered by a party or parties seeking to seal a record differs from the type of privacy invasion that is suffered by all parties in civil suits. Otherwise, the trial court is not justified in closing the record from public scrutiny.

In re Atlanta J.-Const., 271 Ga. 436, 437–38 (1999).

Had the legislature intended to create a process in the Hope Act by which court records could be sealed—it could have easily done so, as it has done many times before. For example, the Taxpayer Protection Against False Claims Act expressly states that complaints "shall be filed in camera and under seal," and "shall remain under seal for at least 60 days." O.C.G.A. § 23-3-122 (b)(2). Likewise, when a record pertaining to the disposition of a child in juvenile court is "filed in a superior or state court or admitted into evidence in a superior or state court proceeding, it shall

be filed under seal." O.C.G.A. § 15-11-703. When a witness testifies before a Grand Jury pursuant to a grant of immunity, the original transcript "shall be filed under seal..." O.C.G.A. § 15-12-83. A reference list that identifies each item of redacted information on a court filing "shall be filed under seal…." O.C.G.A. § 15-10-54 (g). When an individual is convicted of an offense and sentenced as a direct result of the defendant being the victim of an offense of trafficking, the individual may petition to vacate such conviction. O.C.G.A. § 17-10-21(a). Those petitions "shall be filed under seal." O.C.G.A. § 17-10-21(b). Similarly, a petition to examine court records and department records relating to adoption "shall be filed under seal." O.C.G.A. § 19-8-23 (effective July 1, 2022).

In all of the above examples, court record sealing measures were adopted to protect vulnerable witnesses to dangerous crimes, victims of sex trafficking, or minor adoptees. Here, the greatest risk associated with disclosure is potential embarrassment for a government agency or the potential disclosure of trade secret information, which is already protected by another statute. There is no security concern that would merit a blanket seal— and accordingly, the Legislature has intentionally refrained from implementing that advanced level of protection.

That the Legislature intended to grant protection to some of these records in one context does not require the conclusion that the Legislature intended to protect all these records in all contexts. The Hope Act states that "[a]ll working papers, recorded information, documents, and copies *produced by, obtained by, or disclosed to* the commission *pursuant to the activities conducted pursuant to this part*…shall be confidential data…." O.C.G.A. § 16-12-220 (a) (emphasis added). Even if the Legislature had drafted a mechanism into the statute for sealing court records, there would be many documents in the court record that would defy the definition of "confidential information."

For example, during discovery, information might be produced by a third party that was not "produced by, obtained by, or disclosed to" the commission under any of the activities enumerated in O.C.G.A. § 16-12-210. Accordingly, such information would not be confidential. O.C.G.A. § 16-12-220 (a). Pleadings, motions, responses, rulings, judgments, transcripts, and orders are all court records that might not necessarily include the "confidential information" contemplated by O.C.G.A. § 16-12-220 (a); *see also Undisclosed LLC v. State*, 302 Ga. 418, 430–31 (2017) (describing what constitutes a "court record"). And if any court filings might contain the "information published in an official commission report," or "any contract, memorandum of understanding, or cooperative endeavor agreement entered into by the commission," all of that information is *expressly public* under the Hope Act. *See id*.

To be sure, partial redaction is a more time-consuming approach than sealing the entire record. But it is the best approach to ensure transparency, and it has been fully enforced by Georgia courts. Earlier this year, the Court of Appeals reviewed a similar argument in *Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 6, (2022). In *Blau*, an agency argued that a separate statute preempted access to records under the Open Records Act, mirroring the blanket seal arguments advanced here regarding the Hope Act. *See id*. On the other hand, the requester alleged that the withheld public records did not consist entirely of information covered by the Secrecy Act, and that the records could be produced with redactions. *See id*.

The Georgia Court of Appeals held that "[t]he trial court erred in its construction of the Secrecy Act. Construing the Secrecy Act as creating a blanket exemption from disclosure rather than allowing for redaction is inconsistent with the rule that statutory exemptions to the Open Records Act are to be construed narrowly." *Blau,* 364 Ga. App. at 7. The Court noted that O.C.G.A. § 50-18-72 (b) of the Open Records Act directs that the exemptions set forth in

that statute must be interpreted narrowly to exclude from disclosure *only* that *portion* of a public record to which an exclusion applies.

The Court of Appeals explained that this partial withholding/redaction rule is not limited to exemptions within the Open Records Act, but that it also applies to other statutes that limit access to government records, like the Secrecy Act and here, the Hope Act:

> While this direction is by its terms applicable only to the exemptions listed in O.C.G.A. § 50-18-72, our Supreme Court has reasoned that it would be incongruous were the same standard of narrow construction not applied to exemptions found in other parts of the Code. Consequently, our Supreme Court has concluded that *any* purported statutory exemption from disclosure under the Open Records Act must be narrowly construed.

Blau, 364 Ga. App. at 7-8. (internal citations and quotations omitted). The Court of Appeals, paraphrasing the Supreme Court, noted that "[t]o exclude an entire document because it contains exempted material would be unresponsive to the legislative intent underlying the Open Records Act." *Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 7–8 (2022) (quoting *Hardaway Co. v. Rives,* 262 Ga. 631, 634 (1992)).

There is no language within the Hope Act that expressly contemplates sealing judicial records. And even if there is justification for withholding records that fall within the confidential data definition of the Hope Act, only the information that meets that definition should be withheld. OSAH decided, as a blanket rule, that the mere fact that *some* of its records *might* be exempt under the Open Records Act (a hypothetical question for which it would not have subject matter jurisdiction) was sufficient to bypass the constitutional safeguards that protect the public's access to the courts.

III. Trade Secrets Can Be Protected Without Infringing the Public Interest

If the parties below are attempting to protect commercial trade secrets, the protection of trade secret information falls under a separate statute with its own rigorous standards that should

be applied to each record for which the trade secret protection is being sought. *See* O.C.G.A. § 10–1–761(4); *see also Smith v. Mid–State Nurses,* 403 S.E.2d 789 (Ga. 1991) (holding that commercial information is not a trade secret unless it meets the demanding standards of the Trade Secret Act). The correct approach would be for the parties to identify which of these records would reveal information that would qualify as a trade secret, such that the matter might proceed in conformity with Rule 21. The result of this process would be that a fraction of these records might be sealed or redacted, assuming all other requirements are met.[5] *See* Ga. Unif. Super. Ct. R. 21.1 (stating that the order sealing the records must "specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation."); *see also Atlanta Journal v. Long*, 258 Ga. 410, 414 (1988) (holding that to seal a court document, the moving party must show a prospect of harm that "differs in degree or kind from that of parties in other civil suits.").

But rather than using the preexisting process to protect their trade secret information, instead, several parties to the action below seek to rewrite the Hope Act to include a device for sealing this record in its entirety—which allows them to proceed without conducting any review or analysis of the individual subject records. This maneuver will not suit the decades-long tapestry of jurisprudence in Georgia that leans in favor of keeping court records unsealed.

IV. Significant Public Interest

Medical cannabis laws are of high public interest within this state and across the nation. [6] For the nearly 25,000 healthcare patients already on the state's registry, the performance of the

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[5] If it is unclear whether a record is exempt in whole or in part from disclosure by law or privilege, this Court (or the ALJ) may exercise its discretion to order *in camera* review. *See, e.g., St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.,* 746 S.E.2d 98, 108 (Ga. 2013).

[6] Russell, Dale, *Critics question why Georgia Access to Medical Cannabis Commission is exempt from Open Records*, Fox 5 Atlanta, October 7, 2021, available at: https://www.fox5atlanta.com/news/many-question-why-georgia-cannabis-commission-is-exempt-from-open-records.amp (last accessed September 26, 2022).

commission and its contractors is paramount.[7] Georgia taxpayers have a legitimate interest in reviewing state government's stewardship of their money. And for the press to inform the public, it must be afforded access to every court record that is not properly exempt from access.

This significant public interest should be considered before any sealing of these records. "An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." Rule 21.1-21.2; *see Atlanta Journal v. Long*, 258 Ga. 410, 413 (1988). A deciding court must "weigh the harm to the privacy interest of that party from not sealing the pre-judgment documents against the harm to the public interest from sealing the documents. Before sealing the documents, the court must conclude that the former clearly outweighs the latter." *Id.* at 414 (emphasis added).

Ultimately, the future of medical cannabis and the laws surrounding it rests on the shoulders of Georgia's taxpayers, who, through their duly elected representatives, are the sovereigns of this state. The press must inform them:

> From the free flow of numerous ideas the sovereign ultimately chooses some, eliminates others, and directs the course of the state. Without the free flow of these ideas the state loses direction.
>
> The press plays a peculiar role in this process because it is through the press the ideas are reported to the sovereign. There is no other effective way to report to the sovereign than through the press. If the sovereign was an individual rather than the people collectively, it would be possible to employ special agents to gather ideas and facts from all sources and bring them to the sovereign. Obviously, this cannot be done effectively other than by means of mass communications when the sovereign is the mass of persons called the people. The sovereign has determined it is in the best interest of all that it receive these ideas.

[7] Warren, Ted, *Georgia Board picks 2 companies to sell medical marijuana*, WABE, September 22, 2022, available at: https://www.wabe.org/georgia-board-picks-2-companies-to-sell-medical-marijuana/ (last accessed September 26, 2022).

Vaughn v. State, 381 S.E.2d 30, 32 (Ga. 1989) (Gregory, J., dissenting). The press obtains this information by inspection of court records, such as the ones here. The interest of the press *is* the interest of the public.

It cannot be said that because this case is about the financial or commercial information of private entities, that it is not also of public interest. Through misconduct or alleged misconduct, a private entity can become a legitimate public interest. *See Macon Tel. Pub. Co. v. Tatum,* 436 S.E.2d 655, 657 (Ga. 1993) (holding that a private citizen became "the object of a legitimate public interest" due to her misconduct, such that the newspaper could publish facts about her, including her name).

> The Georgia Constitution guarantees the freedom of the press. A free press is necessary to permit public scrutiny on the conduct of government and to ensure that government operates openly, fairly, and honestly. In first recognizing the right to privacy, this court noted that the right is unquestionably limited by the right to speak and print. For example, we held in *Waters* that the publication of photographs of a murder victim did not violate her mother's right to privacy since, where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one's legal right of privacy.

Tatum, 436 S.E.2d at 657 (internal citations and quotations omitted). By *voluntarily* applying for and receiving a license to perform a *government function*, these private companies have taken on the corresponding responsibility of a higher standard of scrutiny. Their actions are now of legitimate public interest, especially considering the serious allegations that have emerged relating to their participation in the bidding process. While the movants may have an interest in keeping some information in the record sealed, it is in the best interest of the press—and in the best interest of the entire state—that these court records remain open and available to inspection.

V. Reconciliation of The Hope Act and Rule 21

The approach to sealing the record should begin with *in camera* review of any record that a party considers "confidential data" under the Hope Act, or in the alternative, the party claiming

the designation might provide a privilege log or attestation explaining which records meet the description, and how. *See In re Atlanta J.-Const.,* 271 Ga. 436, 437–38 (1999) (explaining that the party seeking to seal the records carries the burden of proving that the resulting harm clearly outweighs the public's substantial interest in accessing the records).

Then, because the Hope Act does not provide a mechanism for sealing court records, the court would invoke the Rule 21.2 balancing test to determine whether the harm of disclosure of the information, including the confidential data, "clearly outweighs" the public interest. *See* Ga. Unif. Super. Ct. R. 21.2. If there is information in the record that qualifies as "confidential data" under the Hope Act, this fact should tip the scales toward privacy, but only as to those specific records. Documents not entirely comprised of confidential data should be redacted. *See Blau v. Georgia Dep't of Corr.,* 364 Ga. App. 1, 6, (2022).

From that point, the remaining tenets of Rule 21 and its common law counterparts should be followed. The order should specify which parts of the record are sealed, the duration of the seal, and the specific facts which led the Court to conclude that the privacy interest clearly outweighs the public interest. *See In re Atlanta J.-Const.,* 271 Ga. at 438. And of course, before the lower court can sustain the seal, a hearing must be held on the issue. *See id*. "The requirement of a hearing held upon reasonable notice is indispensable to the integrity of the process mandated for limiting access to court records, because "justice faces its greatest threat when courts dispense it secretly." *Id*.

The constitutional nature of the public's right to access court records and proceedings demands that a tribunal exercise thoughtful consideration, even in informal administrative law contexts. This approach places the legislature's special treatment of certain medical cannabis records into the existing framework of the rules and cases governing access, ensuring that

legislative intent is honored while access to court records and proceedings remains as open as possible, in accordance with our constitutional principles.

The Foundation requests that this Honorable Court amend the order of the OSAH to permit access to these records. *See* Ga. Unif. Super. Ct. R. 21.5 (providing that the order may be amended by the appropriate appellate court). In the alternative, the Foundation requests that this Honorable Court remand this matter to the OSAH to amend the order in accordance with Georgia's constitutional transparency principles.

Respectfully submitted this the 28th day of September, 2022.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE:

REVOLUTION GEORGIA LLC,
ASPIRE MEDICAL PARTNERS LLC,
GA BIOSCIENCE RESEARCH INC.,
CURALEAF GA HOLDINGS LLC,
PEACH STATE MEDICINALS LLC,
PURE BEAUTY GA LLC,
CUMBERLAND CURATIVE LLC,
SYMPHONY MEDICAL LLC,
PURE PEACH ORGANIC INC.,
ACC LLC, PEACH HEALTH
ALTERNATIVES LLC,
HARVEST CONNECT LLC,
SILVERLEAF HEALTH ALTERNATIVES
INC., and
REMEDIUM LIFE SCIENCE OF GEORGIA
LLC,

Petitioners,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC;
and TREEVANA REMEDY, INC.,

Respondents.

Case No. 2022CV370799

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Ga. Code Ann. § 5-6-32, I served a copy of the foregoing via mail on this the 28th day of September 2022, upon the following:

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EXHIBIT A

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

IN RE: REVOLUTION GEORGIA LLC, ASPIRE MEDICAL PARTNERS LLC, GA BIOSCIENCE RESEARCH INC., CURALEAF GA HOLDINGS LLC, PEACH STATE MEDICINALS LLC, PURE BEAUTY GA LLC, CUMBERLAND CURATIVE LLC, SYMPHONY MEDICAL LLC, PURE PEACH ORGANIC INC., ACC LLC, PEACH HEALTH ALTERNATIVES LLC, HARVEST CONNECT LLC, SILVERLEAF HEALTH ALTERNATIVES INC., and REMEDIUM LIFE SCIENCE OF GEORGIA LLC, Petitioners, v. FFD GEORGIA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC. Respondents.	RFP ID # 11232020 *Petitioner Pure Peach Organic, Inc.,* GMCC-PL-2226125-60-OSAH-Howells Agency Ref.: 2021-PRO-00010 *Petitioner Symphony Medical, LLC,* GMCC-PL-2226124-60-Howells Agency Ref.: 2021-PRO-00009 *Petitioner Pure Peach Organic, Inc.,* GMCC-PL-2226125-60-Howells Agency Ref.: 2021-PRO-00010 *Petitioner Cumberland Curative, LLC,* GMCC-PL-2226123-60-Howells Agency Ref.: 2021-PRO-00008 *Petitioner Aspire Medical Partners, LLC,* GMCC-PL-2226133-60-Howells Agency Ref.: 2021-PRO-00002 *Petitioner ACC, LLC,* GMCC-PL-2226148-60-Howells Agency Ref.: 2021-PRO-00011 *Petitioner Remedium Life Science of Georgia, LLC,* GMCC-PL-2226131-60-Howells Agency Ref.: 2021-PRO-00015 *Petitioner Silverleaf Health Alternatives, Inc.,* GMCC-PL-2226128-60-Howells Agency Ref.: 2021-PRO-00014 *Petitioner GA Bioscience Research, Inc.,* GMCC-PL-2226134-60-Howells Agency Ref.: 2021-PRO-00003 *Petitioner Peach State Medicinals, LLC,* GMCC-PL-2226140-60-Howells Agency Ref.: 2021-PRO-00005 *Petitioner Harvest Connect,* GMCC-PL-2226126-60-Howells Agency Ref.: 2021-PRO-0012

RESPONDENTS' JOINT MOTION TO SEAL

Pursuant to Rule 616-1-2-.16 and O.C.G.A. § 16-12-220, Respondents FFD Georgia Holdings, LLC; Theratrue Georgia, LLC; Natures GA, LLC; and Treevana Remedy, Inc. (together, "Respondents"), hereby move to seal the underlying record in the above-captioned matters in their entirety. The Hope Act, O.C.G.A. § 16-12-220(a), states in pertinent part, "All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commission pursuant to the activities conducted pursuant to this part, other than information published in an official commission report regarding the activities conducted pursuant to this article, shall be confidential data and shall not be subject to Article 4 of Chapter 18 of Title 50." Respondents respectfully request that the records be sealed in order to ensure the confidentiality of the parties' documents and data consistent with the requirements of the Hope Act.

A proposed order is attached hereto as Exhibit A.

Respectfully submitted this 6th day of June, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing **RESPONDENTS' MOTION TO SEAL** with the Office of State Administrative Hearings, which will automatically send e-mail notifications of such filing to all counsel of record.

This 6th day of June, 2022.

/s/ Jacqueline T. Menk
Jacqueline T. Menk

EXHIBIT "A"

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

IN RE: REVOLUTION GEORGIA LLC, ASPIRE MEDICAL PARTNERS LLC, GA BIOSCIENCE RESEARCH INC., CURALEAF GA HOLDINGS LLC, PEACH STATE MEDICINALS LLC, PURE BEAUTY GA LLC, CUMBERLAND CURATIVE LLC, SYMPHONY MEDICAL LLC, PURE PEACH ORGANIC INC., ACC LLC, PEACH HEALTH ALTERNATIVES LLC, HARVEST CONNECT LLC, SILVERLEAF HEALTH ALTERNATIVES INC., and REMEDIUM LIFE SCIENCE OF GEORGIA LLC, Petitioners, v. FFD GEORGIA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC. Respondents.	RFP ID # 11232020 *Petitioner Pure Peach Organic, Inc.,* GMCC-PL-2226125-60-OSAH-Howells Agency Ref.: 2021-PRO-00010 *Petitioner Symphony Medical, LLC,* GMCC-PL-2226124-60-Howells Agency Ref.: 2021-PRO-00009 *Petitioner Pure Peach Organic, Inc.,* GMCC-PL-2226125-60-Howells Agency Ref.: 2021-PRO-00010 *Petitioner Cumberland Curative, LLC,* GMCC-PL-2226123-60-Howells Agency Ref.: 2021-PRO-00008 *Petitioner Aspire Medical Partners, LLC,* GMCC-PL-2226133-60-Howells Agency Ref.: 2021-PRO-00002 *Petitioner ACC, LLC,* GMCC-PL-2226148-60-Howells Agency Ref.: 2021-PRO-00011 *Petitioner Remedium Life Science of Georgia, LLC,* GMCC-PL-2226131-60-Howells Agency Ref.: 2021-PRO-00015 *Petitioner Silverleaf Health Alternatives, Inc.,* GMCC-PL-2226128-60-Howells Agency Ref.: 2021-PRO-00014 *Petitioner GA Bioscience Research, Inc.,* GMCC-PL-2226134-60-Howells Agency Ref.: 2021-PRO-00003 *Petitioner Peach State Medicinals, LLC,* GMCC-PL-2226140-60-Howells Agency Ref.: 2021-PRO-00005 *Petitioner Harvest Connect,* GMCC-PL-2226126-60-Howells Agency Ref.: 2021-PRO-0012

[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION TO SEAL

This case is before this Court on Respondents' Motion to Seal the record in the above-captioned cases. The Court has reviewed Applicant's Motion and hereby GRANTS such motion.

SO ORDERED this _____ day of June, 2022.

_____
Judge Stephanie Howells
Administrative Law Judge
Office of State Administrative Hearings

Order Prepared By:

/s/ Jacqueline T. Menk
Jacqueline T. Menk
Georgia Bar No. 728365

EXHIBIT B

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

CUMBERLAND CURATIVE LLC, Petitioner, v. **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC;** **and TREEVANA REMEDY, INC.,** Respondents.	**Docket No.: 2226123** **2226123-OSAH-GMCC-PL-60-Howells** **Agency Reference No.:** **2021-PRO-00008**

CUMBERLAND CURATIVE'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO SEAL

Petitioner Cumberland Curative LLC hereby submits this Response in Opposition to Respondents' Joint Motion to Seal (the "Motion") and respectfully asks that the facially overbroad Motion be denied.

First, Respondents' Motion should be denied at the threshold for failing to comply with this Court's procedural requirements. Respondents never attempted to confer with counsel for Petitioner to reach an agreement about sealing the record before filing their Motion and seeking judicial intervention. As this Court's May 31, 2022 Order made clear, all "motions shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties to resolve the dispute without court action." Respondents did not confer, or attempt to confer, with Petition, so their Motion should be denied.

To be sure, had Respondents complied with this Court's Order, Petitioner would have informed them that Petitioner opposes the relief sought in the Motion because it is facially overbroad and legally improper, but Petitioner would have also informed them that Petitioner is

not opposed to the sealing of portions of the record, on an individual basis and upon a proper showing of necessity. Whether Respondents would have accepted Petitioner's proposal is an open question, but it is at least one that the parties should have discussed before the Motion was filed.

Second, Respondents' Motion must also be denied because the relief sought is facially overbroad, lacks statutory support, and is inimical to the principles of free and open government. Respondents do not merely seek to seal individual exhibits or filings based on any real or perceived harms they might suffer from the disclosure of sensitive or protected information, but instead seek to seal "the underlying record" in its "entirety," without any cause whatsoever. Motion at 2. Such an overbroad order sealing the entire record—which is not complete or closed and the full content of which cannot yet be ascertained—might ease the administrative filing burdens on Respondents, their desire for administrative ease is not enough to overcome the public's serious interest in access to judicial records. As the late Justice Richard Bell explained,

> Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system *abhors* star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose.

Atlanta Journal v. Long, 258 Ga. 410, 411 (1988) (emphasis added). Moreover, Petitioner maintains an interest in being able to freely share its work product to the extent it contains Petitioner's own information and ideas and does not contain or threaten to disclose *any* information that belongs to Respondents, including all of Petitioner's filings to date.

Nor does the statute Respondents rely upon provide them with grounds to seal this entire case. Section 16-12-220(a) merely makes confidential the papers, information, and documents that are produced by, obtained by, or disclosed "to *the commission*" (emphasis added). Aside from Petitioner's Initial Protest and application, none of the filings in this case have *ever* been submitted to, much less produced by, the Commission, and said Initial Protest and application were

voluntarily hosted on the Commission's website *by the Commission*. And surely Respondents do not make the argument that the filings in this case become "confidential data" when the Commission's counsel receives service copies. Though it could be said that such copies are then "obtained by" the Commission, the protection in O.C.G.A. § 16-12-220(a) only extends to documents obtained by the Commission "pursuant to the activities conducted pursuant to this part," i.e., the competitive application process administered by the Commission. Regardless, and critically, *the Commission itself has not sought to seal any records in this Proceeding.*

Relying on Long, supra, the Supreme Court has reversed a blanket sealing order like the one Respondents seek because the trial court failed to make specific findings of fact explaining "how a privacy invasion that may be suffered by a party or parties seeking to seal a record differs from the type of privacy invasion that is suffered by all parties in civil suits." In re Atlanta Journal Constitution, 271 Ga. 436, 438 (1999). After all, "[b]y their nature, civil lawsuits quite often cause litigants to experience an invasion of privacy and resulting embarrassment, yet that fact alone does not permit trial courts to routinely seal court records." Id. Petitioner agrees with Respondents that certain information that is relevant to this case might need to be sealed to protect Respondents' and Petitioner's interests in their intellectual property, but Petitioner submits that any sealing decision should go no further and, moreover, should be made only with respect to individual filings, or portions thereof.

OSAH's own rules recognize that the "hearing record" presumptively "shall be available to the public, except as provided by law according confidentiality." OSAH R. 23. And OSAH has likewise recognized that Georgia's strong interest in "public trials that are open to the press and public" extends to proceedings before this Court. Ga. Composite Medical Board v. Dodds, M.D., OSAH-CSBME-PHY-1444768-33-Malihi (Apr. 30, 2014) (granting CBS News's Rule 43 motion

to record and broadcast portions of physician disciplinary hearing not involving patient information) (attached hereto as Exhibit A). When a member of the media submits such a Rule 43 motion, OSAH looks to the Uniform Superior Court Rules when evaluating the request. So, too, should this Court look to the Uniform Superior Court Rules and related case law when evaluating whether to seal any records in this proceeding.

The Uniform Superior Court Rules, like OSAH's rules, start with the presumption that all court files are available for public inspection, unless otherwise limited by law. See Unif. Super. Ct. R. 21. In order to seal court records, the USCR 21.2 *mandates* that the court make a factual finding, after a hearing, "that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest," and USCR 21.2 requires that the order sealing records specify the specific information sealed, the nature and duration of the seal, and the reason it was sealed. See also In re AJC, 271 Ga. at 438 ("Before [a court] is authorized to seal court records [under USCR 21], the trial court must make factual findings which lead it to conclude as a matter of law that the [harm to the movant's privacy interests] clearly outweighs the [harm to the public's right of access.]"). This approach has been used by the Superior Courts for years, has been approved—indeed, mandated—by the Supreme Court, and should likewise be used in these proceedings.

Petitioner is not opposed to limited sealing of the record, but Petitioner proposes that this Court rely on the procedure that the Supreme Court requires of Superior Courts. First, the decision to seal a record should be made on an individual basis and only upon an evidentiary showing that (i) the information that a party seeks to be sealed would harm the party's competitive standing or another valid privacy interest if disclosed and (ii) that such harm *clearly outweighs* the harm to the public's right of access from sealing the information. If information is sealed, the movant should

then be required to file a public copy of the document containing the sealed information in redacted form so that the unprotected or unsealed portions will be available to the public for review.

In conclusion, Petitioner's proposed sealing procedure provides more than sufficient protection to the parties' privacy interests and ensures that the public will have access to the meat of these critically important proceedings. Respondents' approach, on the other hand, would keep these proceedings under an unwarranted veil of secrecy and cause the public and the patients to lose even more faith in the fairness and integrity of this process. Consequently, their Motion should be denied.

Respectfully submitted this 10th day of June, 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have on this day caused a true and correct copy of the forgoing to be served on counsel for all parties of record, via electronic mail, addressed as follows:

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This 10th day of June, 2022.

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EXHIBIT A

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GEORGIA COMPOSITE MEDICAL BOARD,	:	
Petitioners,	:	**Docket Nos.: OSAH-CSBME-PHY-1444768-33-Malihi**
v.	:	
NEDRA DODDS, M.D.,	:	
Respondent.	:	

ORDER

On April 8, 2014, Adam Murphy of CBS News requested the right to broadcast, record, and/or photograph any hearings in the present matter, including the evidentiary hearing. Petitioner filed a Response on April 10, 2014, and Respondent filed a Motion in Opposition on April 17, 2014. Mr. Murphy filed a reply on April 24, 2014. Both Petitioner and Respondent assert that the bulk of the evidence at the hearing will involve evidence and testimony surrounding the care and treatment of four patients, which gave rise to the present disciplinary action against Respondent. For the reasons given below, Mr. Murphy's Rule 43 Request is granted in part and denied in part.

As this case involves discipline of a licensee by the Georgia Composite Medical Board, the provisions of Code Section 43-34-8 apply. The law specifies:

> In any hearing to determine a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, any record relating to any patient of the licensee, certificate holder, permit holder, or applicant shall be admissible into evidence, regardless of any statutory privilege which such patient might otherwise be able to invoke. In addition, no such patient may withhold testimony bearing upon a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter on the ground of privilege between such licensee, certificate holder, permit holder, or applicant and such

> patient. Any testimony or written evidence relating to a patient of a licensee, certificate holder, permit holder, or applicant or to the record of any such patient shall be received by the board in camera and shall not be disclosed to the public.

O.C.G.A. § 43-34-8(e) (emphasis added). Because much of the hearing will involve patient treatment information that may not be disclosed to the public, unrestricted grant of the Rule 43 Request would be unlawful without more.

Given the purpose of the privacy protection of Code Section 43-34-8(e), patients (or their representatives) may waive the evidentiary restrictions on use of their records. Specifically, the code provision is intended to protect patient privacy in circumstances where the patient is forcibly deprived of a statutory privilege. The in camera receipt of all records and evidence related to the treatment of patients strikes a balance between protecting the privacy needs of patients and protecting the need to conduct effective disciplinary hearings. Thus, where a patient waives the right either (1) in writing or (2) by putting his or her "care and treatment or the nature and extent of his [or her] injuries at issue in any civil or criminal proceeding," *King v. State*, 272 Ga. 788, 793 (2000), the waiver eliminates the need to receive all such treatment records in camera. Here, one of the patients, Ms. Jenkins, waived her right to privacy with regard to her medical treatment to the extent that she placed her treatment by Dr. Dodds at issue in a civil action currently pending in the State Court of Cobb County, Georgia. There is no evidence that the remaining three patients, whose care and treatment are of concern in this case, have waived their right to privacy in writing or otherwise.

Nevertheless, regardless of whether there are patient waivers, there may be portions of the hearing that do not implicate the restrictions of Code Section 43-34-8(e). Specifically, the provision restricts only the public presentation of evidence of a patient's medical treatment, which does not include testimony relating to Respondent's qualifications, expert testimony and

the like, or opening and closing arguments, which are not evidence. *Bell v. State*, 294 Ga. 443, 443 (2014). In relation to these portions of the proceeding, the undersigned looks to Uniform Superior Court Rule 22 ("Rule 22") to determine whether and to what extent to grant an OSAH Rule 43 request. Ga. Comp. R. & Regs. 616-1-2. Rule 22 dictates that "[a] request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any judicial proceeding be evaluated pursuant to the standards set forth in O.C.G.A. § 15-1-10.1." Ga. Unif. Super. Ct. 22.

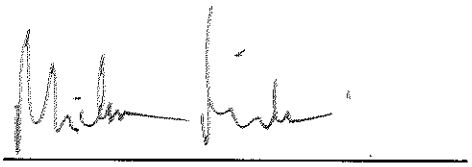
Code Section 15-1-10.1 sets standards for granting requests for electronic media coverage of judicial proceedings by considering "the impact on the public interest and the rights of the parties in open judicial proceedings, the impact upon the integrity and dignity of the court, and whether the proposed activity would contribute to the enhancement of or detract from the ends of justice." O.C.G.A. § 15-1-10.1(a). Here, considering the factors listed in the statute, this Court finds that allowing electronic media coverage of portions of the hearing would "increase public access to the courts and openness of judicial proceedings" without impacting the integrity, dignity, or administration of the Court. O.C.G.A. § 15-1-10.1(b), (e); *see Morris Comm., LLC v. Griffin*, 279 Ga. 735, 737 (2005) (presence of camera will generally increase openness); *WALB-TV, Inc. v. Gibson*, 269 Ga. 564, 566 (1998) (abuse of discretion to find stationary and silent camera disruptive). Georgia law favors public trials that are open to the press and public. *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 579, 580-81 n.1 (1982). In general, medical licensing cases are of concern to the public, given the potential for danger to the public of the continued licensure of dangerous practitioners. *See Geiger v. Jenkins*, 316 F. Supp. 370, 373 (1970), *aff'd*, 401 U.S. 985 (1971) ("The right to practice medicine is a conditional right which is subordinate

to the state's power and duty to safeguard the public health"). Here, in light of the seriousness of the allegations, there is a particularly strong need for an open courtroom.

Accordingly, this Court will allow Mr. Murphy to video and audio record all portions of the hearing not involving the medical treatment of the patients. In addition, Mr. Murphy and his crew may be present and electronically and photographically record those portions of the hearing covered by Code Section 43-34-8(e) for which a patient has waived his or her right to privacy, either in writing or to the extent he or she has put his or her care and treatment at issue in a civil suit.

All set up and use of electronic equipment must be done in accordance with Rule 22 to minimize any interruption of or distraction from court proceedings. In the absence of patient approval, all recording equipment must be promptly turned off or removed from the courtroom for closed portions of the hearing where a patient has not waived the right to the privacy of his or her medical treatment.

SO ORDERED, this the 30th day of April, 2014.



MICHAEL MALIHI, Judge

EXHIBIT C

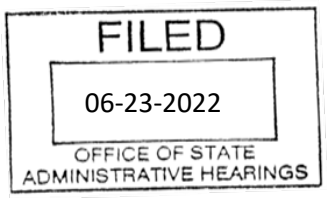
ACC, LLC,
Petitioner,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC; and
TREEVANA REMEDY, INC.;
Respondents.

Docket No.: 2226148
2226148-OSAH-GMCC-PL-60-Howells

Agency Reference No.: 2021-PRO-00011



ASPIRE MEDICAL PARTNERS, LLC,
Petitioner,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC; and
TREEVANA REMEDY, INC.;
Respondents.

Docket No.: 2226133
2226133-OSAH-GMCC-PL-60-Howells

Agency Reference No.: 2021-PRO-00002

CUMBERLAND CURATIVE LLC,
Petitioner,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC; and
TREEVANA REMEDY, INC.;
Respondents.

Docket No.: 2226123
2226123-OSAH-GMCC-PL-60-Howells

Agency Reference No.: 2021-PRO-00008

GA BIOSCIENCE RESEARCH, INC.,
Petitioner,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC; and
TREEVANA REMEDY, INC.;
Respondents.

Docket No.: 2226134
2226134-OSAH-GMCC-PL-60-Howells

Agency Reference No.: 2021-PRO-00003

HARVEST CONNECT LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226126** **2226126-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-0012**
PEACH HEALTH ALTERNATIVES, LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226127** **2226127-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00013**
PEACH STATE MEDICINALS, LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226140** **2226140-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00005**

PURE BEAUTY GA, LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226144** **2226144-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00007**
PURE PEACH ORGANIC, INC., **Petitioner,** **v.** **FFD GA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226125** **2226125-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00010**
REMEDIUM LIFE SCIENCE OF GEORGIA LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226131** **2226131-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00015**

REVOLUTION GEORGIA LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.,** **Respondents.**	**Docket No.: 2226065** **2226065-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00001**
SILVERLEAF HEALTH ALTERNATIVES INC., **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226128** **2226128-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00014**
SYMPHONY MEDICAL LLC, **Petitioner,** **v.** **FFD GA HOLDINGS, LLC;** **THERATRUE GEORGIA, LLC;** **NATURES GA, LLC; and** **TREEVANA REMEDY, INC.;** **Respondents.**	**Docket No.: 2226124** **2226124-OSAH-GMCC-PL-60-Howells** **Agency Reference No.: 2021-PRO-00009**

ORDER GRANTING MOTION TO SEAL

On June 6, 2022, the respondents in the above styled cases filed their Joint Motion to Seal. The Petitioners in the following cases have opposed respondents' motion: *Cumberland Curative, LLC v. FFD GA Holdings, LLC, et al*., Docket No. 2226123-OSAH-GMCC-PL-60-Howells; *Aspire Medical Partners, LLC v. FFD GA Holdings, LLC, et al*., Docket No. 2226133-

OSAH-GMCC-PL-60-Howells; and *Peach State Medicinals, LLC v. FFD GA Holdings, LLC, et al*., Docket No. 2226140-OSAH-GMCC-PL-60-Howells.

To the extent the respondents seek the record in these matters to be exempt from open records requests, the motion is **GRANTED**. Pursuant to Georgia Code Section 16-12-220, these matters have been designated as confidential. Accordingly, any documents submitted or filed, any transcripts, or recordings are not subject to the Georgia Open Records Act and therefore will not be publicly disclosed. Furthermore, the hearing in these cases and in all cases referred to the Office of State Administrative Hearings ("OSAH") by the Georgia Access to Medical Cannabis Commission ("Commission") will be closed to the public, and to non-parties, their representatives, and their counsel.

SO ORDERED, this 23rd day of June, 2022.

Stephanie M. Howells

Stephanie M. Howells
Administrative Law Judge

From:	Devin Hamilton
To:	aorie@minorfirm.com; jbledsoe@minorfirm.com; Carl Gebo; Fisher Law; bill.arnold@acinjurylaw.com; jevans@hallboothsmith.com; Kevin Kucharz; rsnyder@taylorenglish.com; Mike Williams; rbrazier@bakerdonelson.com; Stuart, Jonathan; ashe@bmelaw.com; mesa@bmelaw.com; jeff.belkin@alston.com; arabella.okwara@alston.com; las@wimlaw.com; Rhonda L. Klein; Charles C. Clay; Melissa Andrews; J. Matthew Maguire, Jr.; Jane Kwak; JALLEN@CCEALAW.COM; Keri M. Martin; Kristen Goodman; klentz@bakerlaw.com; aedmondson@robbinsfirm.com; Berlin, Eric P.; matt.parrish@robbinsfirm.com; Trevino, Sarah E.; dbauer@bakerlaw.com; wcollins@burr.com; jmenk@bakerlaw.com; Vincent Russo; Zachman, Jeff; joanne.caceres@dentons.com
Subject:	GMCC PL Order in Class 2 Protests
Date:	Thursday, June 23, 2022 12:32:30 PM
Attachments:	GMCC PL Order In Class 2 Protests.pdf

Good afternoon,

Please find the attached Order. Thank you.

Best,

Devin Hamilton
Legal Assistant
Office of State Administrative Hearings

Phone: 404-657-3337
Fax: 404-657-3337
Email: devinh@osah.ga.gov

225 Peachtree Street NE
Suite 400
Atlanta, GA 30303

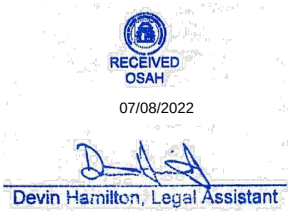
Go to www.osah.ga.gov for hearing dates, procedures, and other helpful information.

The Staff at the Office of State Administrative Hearings is not authorized to provide legal advice.

OSAH does not accept motions, requests for continuances, or conflict letters embedded in an email. You may prepare and file a motion and proof of service electronically, pursuant to OSAH Rules 4 and 16, by attaching the documents to an e-mail in either Microsoft Word or PDF format. You are required to serve the motion in accordance with OSAH Rule 11. Your motion and the response, if any, will be presented to the Judge for his/her consideration. Once an Order is issued by the Judge, a copy of that Order will be sent to all parties or their counsel of record. For your convenience, below is the link to our procedural rules: https://osah.ga.gov/wp-content/uploads/2019/03/administrative_rules_osah.pdf

EXHIBIT D

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



IN RE:

REVOLUTION GEORGIA LLC,
ASPIRE MEDICAL PARTNERS LLC,
GA BIOSCIENCE RESEARCH INC.,
CURALEAF GA HOLDINGS LLC,
PEACH STATE MEDICINALS LLC,
PURE BEAUTY GA LLC,
CUMBERLAND CURATIVE LLC,
SYMPHONY MEDICAL LLC,
PURE PEACH ORGANIC INC.,
ACC LLC, PEACH HEALTH
ALTERNATIVES LLC,
HARVEST CONNECT LLC,
SILVERLEAF HEALTH ALTERNATIVES
INC., and
REMEDIUM LIFE SCIENCE OF GEORGIA
LLC,

Petitioners,

v.

FFD GA HOLDINGS, LLC;
THERATRUE GEORGIA, LLC;
NATURES GA, LLC;
and TREEVANA REMEDY, INC.,

Respondents.

Docket No.: 2226123

2226123-OSAH-GMCC-PL-60-Howells

THE GEORGIA FIRST AMENDMENT FOUNDATION'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The Georgia First Amendment Foundation respectfully moves for leave to file the accompanying Amicus Curiae brief. *See* Administrative Rule of Procedure 616-1-2-.16; *see also* 616-1-2-.02(2-3) (granting this Court discretion to rule on procedural matters). The Foundation seeks to offer a unique perspective as to the government transparency issues implicated by Respondent's Joint Motion to Seal.

The proper function of an amicus is to "call the court's attention to law or facts or circumstances in a matter then before it that may otherwise escape its consideration." *Vill. of N. Atlanta v. Cook,* 133 S.E.2d 585, 589 (Ga. 1963) (quoting 4 Am. Jur. 2d, Amicus Curiae, § 3, pp. 110, 111).

The Foundation is a nonpartisan nonprofit advocating for the First Amendment rights of Georgia's finest journalists and citizens. For decades, it has served as a voice for those seeking access to court proceedings, public records, and other matters of public and journalistic concern. The ability to gather information about the operation and performance of government institutions is central to a functioning free press and a well-informed citizenry. *See Atlanta J. v. Long,* 369 S.E.2d 755, 758 (Ga. 1988), *opinion corrected,* 377 S.E.2d 150 (Ga. 1989) (holding that the public enjoys a "traditional right of access to judicial records, except in cases of clear necessity").

As there is no Georgia law that expressly requires these records to be sealed, an order limiting access cannot be granted except upon a finding that "the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." Rule 21.1-21.2; *see Atlanta Journal v. Long*, 258 Ga. 410, 413 (1988). The Foundation represents the public's interest. It speaks on behalf of all who are interested in obtaining these records for the purpose of becoming better informed about the allegations in this suit; and in support of the longstanding right to access court records in the State of Georgia. Because of the Foundation's expertise in this subject and its experience as a seasoned defender of First Amendment rights, it is well-equipped to provide this Court with helpful insight as to the macro-effect of a blanket seal on these records.

Accordingly, the Foundation requests permission to present this Court with its perspective and research. A proposed order and the brief are appended hereto.

Respectfully submitted this 8th day of July, 2022.

RAMSINGH LEGAL

/s/ Joy Ramsingh

Joy Ramsingh
(Nonresident Attorney Admission pending)
TN Supreme Court ID # 035938
PA Supreme Court ID # 326874
4203 Union Deposit Road, #1030
Harrisburg, Pennsylvania 17111
Tel.: (717) 461-2174
joy@ramsinghlegal.com

Counsel for Amicus Curiae, the Georgia First Amendment Foundation

CERTIFICATE OF SERVICE

I hereby certify pursuant to Administrative Rule of Procedure 616-1-2-.04(2)(b), a copy of the foregoing has been filed today via email attachment upon the following:

Office Of State Administrative Hearings
Judge Stephanie Howells
Devin Hamilton
Case Management Assistant
devinh@osah.ga.gov

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Counsel for Petitioner Cumberland Curative, LLC

This 8th day of July, 2022.

/s/ Joy Ramsingh
Joy Ramsingh

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

IN RE: REVOLUTION GEORGIA LLC, ASPIRE MEDICAL PARTNERS LLC, GA BIOSCIENCE RESEARCH INC., CURALEAF GA HOLDINGS LLC, PEACH STATE MEDICINALS LLC, PURE BEAUTY GA LLC, CUMBERLAND CURATIVE LLC, SYMPHONY MEDICAL LLC, PURE PEACH ORGANIC INC., ACC LLC, PEACH HEALTH ALTERNATIVES LLC, HARVEST CONNECT LLC, SILVERLEAF HEALTH ALTERNATIVES INC., and REMEDIUM LIFE SCIENCE OF GEORGIA LLC, Petitioners, v. FFD GA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC., Respondents.	Docket No.: 2226123 2226123-OSAH-GMCC-PL-60-Howells

PROPOSED ORDER GRANTING LEAVE TO FILE AMICUS CURIAE BRIEF

This matter is before this Court on the Georgia First Amendment Foundation's Motion for Leave to File Brief as Amicus Curiae. The Court has reviewed the Foundation's Motion and hereby GRANTS such Motion.

SO ORDERED this _____ day of July, 2022.

Judge Stephanie Howells
Administrative Law Judge
Office of State Administrative Hearings

Order Prepared By:
/s/ Joy Ramsingh
Joy Ramsingh
(Nonresident Attorney Admission Pending)
TN Supreme Court ID # 035938
PA Supreme Court ID # 326874

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

IN RE: REVOLUTION GEORGIA LLC, ASPIRE MEDICAL PARTNERS LLC, GA BIOSCIENCE RESEARCH INC., CURALEAF GA HOLDINGS LLC, PEACH STATE MEDICINALS LLC, PURE BEAUTY GA LLC, CUMBERLAND CURATIVE LLC, SYMPHONY MEDICAL LLC, PURE PEACH ORGANIC INC., ACC LLC, PEACH HEALTH ALTERNATIVES LLC, HARVEST CONNECT LLC, SILVERLEAF HEALTH ALTERNATIVES INC., and REMEDIUM LIFE SCIENCE OF GEORGIA LLC, Petitioners, v. FFD GA HOLDINGS, LLC; THERATRUE GEORGIA, LLC; NATURES GA, LLC; and TREEVANA REMEDY, INC., Respondents.	Docket No.: 2226123 2226123-OSAH-GMCC-PL-60-Howells

BRIEF OF AMICUS CURIAE
THE GEORGIA FIRST AMENDMENT FOUNDATION

The Georgia First Amendment Foundation respectfully submits this brief as a friend of the Court and requests that the Court deny the pending Joint Motion to Seal, which contends that the Hope Act requires the sealing of the entire record in this case.

There are many laws in Georgia that include an expressly defined process for sealing court records. The Hope Act is not one of them. In fact, the Hope Act outlines several types of

records that are expressly public, and places conditions on the information that it deems confidential. For this reason, a blanket seal cannot be applied to the record.

In the absence of a statutory process within the Hope Act for sealing court records, the movants must meet the standards of Uniform Superior Court Rule 21. Rule 21 and related jurisprudence do not support granting this Motion, as movants are required to show that they will suffer special, out-of-the-ordinary harm, as opposed to harm that would occur in a typical lawsuit. Finally, any harm that the movants might suffer must compete in a balancing test with the public interest—which is unparalleled in this case concerning the allocation of taxpayer monies and a new, potentially controversial, trending topic in Georgia's legal landscape.

Interest of Amicus Curiae

The Georgia First Amendment Foundation advocates for the rights of citizens, journalists, and public servants to gather information about the operation and performance of government institutions. GFAF is a nonpartisan, nonprofit coalition. Along with the majority of coalitions in other states, it is a member of the National Freedom of Information Coalition, and it is the only nonprofit organization in the state of Georgia dedicated to advancing access to public information. Its members and leadership include some of Georgia's finest journalists, media organizations, attorneys, and citizens.

For almost thirty years, GFAF has helped journalists access public information as they carry out their constitutional function. Part of this important mission includes supporting access to public information, including access to court records. Without access to information of public interest, the press cannot fulfill its obligation to inform the public. The Georgia First Amendment Foundation is inimitably positioned to provide this Court with a comprehensive public interest

perspective not supplied by any other party to this case, and to demonstrate that both the public and the press will be best served by keeping these records unsealed.

ARGUMENT

I. Georgia's Longstanding Presumption of Access

> "In the State of Georgia, the public and the press have traditionally enjoyed a right of access to court records. Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose."

Atlanta Journal v. Long, 369 S.E.2d 755 (Ga. 1988).

The presumption of access to court records is grounded in both common law and rule. *Merch. L. Firm, P.C. v. Emerson,* 800 S.E.2d 557, 561 (Ga. 2017) (reconsideration denied) ("The right of access to court records under court rule is coextensive with the common law right of access to court proceedings.") "The aim of this presumption is to ensure that the public will continue to enjoy its traditional right of access to judicial records, except in cases of clear necessity. To this end, the presumptive right of access includes pre-judgment records in civil cases, and begins when a judicial document is filed." *Atlanta Journal v. Long*, 258 Ga. 410, 413–14 (1988). This presumption may be overridden only "in cases of clear necessity." *Id.* at 413.

In the event that a law does not expressly provide for sealing court records, Rule 21 sets forth specific and stringent procedures that must be followed before court records may be sealed.[1] *See In re Motion of the Atlanta Journal-Constitution*, 271 Ga. 436, 437 (1999) ("…courts may restrict or prohibit access to court records only if they do so in compliance with the requirements of Rule 21.").

[1] Administrative Rule of Procedure 616-1-2-.02(3) provides that this Court may refer to the Uniform Rules for the Superior Courts to resolve procedural questions that are not addressed by the APA, other applicable law, or the Administrative Rules of Procedure.

Rule 21 and its interpretive case law is an important subset of the overarching rule that the courts must be open to the public eye. As the Georgia Supreme Court declared: "This court has sought to open the doors of Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are a *sine qua non* of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society." *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 578 (1982). The public's ability to access court records is "an essential component of our system of justice" and "is instrumental in securing the integrity of the process." *F.T.C. v. AbbVie Prod. LLC,* 713 F.3d 54, 62 (11th Cir. 2013) (quoting *Chi. Tribune Co. v. Bridgestone/Firestone, Inc.,* 263 F.3d 1304, 1311 (11th Cir.2001) (per curiam)).

This enduring principle is at its most vulnerable when court records are being sealed, which is why Georgia courts have robust procedures for ensuring that the public's interest is carefully considered and weighed against any private interest.

II. There is No Mechanism to Seal Court Records Within the Hope Act

There is no language in the Hope Act that contemplates filing court records under seal. O.C.G.A. § 16-12-220(a). Had the legislature intended to create a process by which court records could be sealed—it could have easily done so, as it has done many times before.

For example, the Taxpayer Protection Against False Claims Act expressly states that complaints "shall be filed in camera and under seal," and "shall remain under seal for at least 60 days." O.C.G.A. § 23-3-122 (b)(2). Likewise, when a record pertaining to the disposition of a child in juvenile court is "filed in a superior or state court or admitted into evidence in a superior or state court proceeding, it shall be filed under seal." O.C.G.A. § 15-11-703. When a witness testifies before a Grand Jury pursuant to a grant of immunity, the original transcript "shall be

filed under seal..." O.C.G.A. § 15-12-83. A reference list that identifies each item of redacted information on a court filing "shall be filed under seal…." O.C.G.A. § 15-10-54 (g). When an individual is convicted of an offense and sentenced as a direct result of the defendant being the victim of an offense of trafficking, the individual may file a petition to vacate such conviction. O.C.G.A. § 17-10-21(a). Those petitions "shall be filed under seal." O.C.G.A. § 17-10-21(b). Similarly, a petition to examine court records and department records relating to adoption "shall be filed under seal." O.C.G.A. § 19-8-23 (effective July 1, 2022).

In all of the above examples, court record sealing measures were adopted to protect vulnerable witnesses to dangerous crimes, victims of sex trafficking, or minor adoptees. Here, the greatest risk associated with disclosure is potential embarrassment for a government agency or the potential disclosure of trade secret information, which is already protected by another statute. There is no security concern that would merit a blanket seal— and accordingly, the Legislature has intentionally refrained from implementing that advanced level of protection.

The fact that the Legislature intended to grant protection to some of these records in one context does not require the conclusion that the Legislature intended to protect all of these records in all contexts. The Hope Act states that "[a]ll working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commission pursuant to the activities conducted pursuant to this part…shall be confidential data…." O.C.G.A. § 16-12-220 (a) (emphasis added). Even if the Legislature had drafted a mechanism into the statute for sealing court records, there would be many documents in the court record that would defy the definition of "confidential information." For example, during discovery, information might be produced by a third party that was not "produced by, obtained by, or disclosed to" the commission pursuant to any of the activities enumerated in O.C.G.A. § 16-12-210. Such information would not be

confidential. O.C.G.A. § 16-12-220 (a). Pleadings, motions, responses, rulings, judgments, transcripts, and orders are all court records that might not necessarily include the "confidential information" contemplated by O.C.G.A. § 16-12-220 (a); *see also Undisclosed LLC v. State*, 302 Ga. 418, 430–31 (2017) (describing what constitutes a "court record"). And, to the extent that any court filings might contain the "information published in an official commission report," or "any contract, memorandum of understanding, or cooperative endeavor agreement entered into by the commission," all of that information is expressly public under the Hope Act. *Id*.

Contrary to the assertions in the Joint Motion to Seal, there is no support within the Hope Act for sealing the entire record. As such, the proper analysis should consider the interest of the public and lead with a presumption of access.

III. Trade Secrets Can Be Protected Without Infringing the Public Interest

To the extent that the movants are attempting to protect commercial trade secrets, the protection of trade secret information falls under a separate statute with its own rigorous standards that should be applied to each record for which the trade secret protection is being sought. *See* O.C.G.A. § 10–1–761(4); *see also Smith v. Mid–State Nurses,* 403 S.E.2d 789 (Ga. 1991) (holding that commercial information is not a trade secret unless it meets the demanding standards of the Trade Secret Act). The correct approach would be for these parties to identify which of these records would reveal information that would qualify as a trade secret, such that this Honorable Court might then proceed in conformity with Rule 21. The result of this process would be that a small portion of these records might be sealed or redacted, assuming all other requirements are met.[2] *See* Ga. Unif. Super. Ct. R. 21.1 (stating that the order sealing the records

[2] If it is unclear whether a record is exempt in whole or in part from disclosure by law or privilege, this Court may exercise its discretion to order *in camera* review. *See, e.g., St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.,* 746 S.E.2d 98, 108 (Ga. 2013).

must "specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation."); *see also Atlanta Journal v. Long*, 258 Ga. 410, 414 (1988) (holding that to seal a court document, the moving party must show a prospect of harm that "differs in degree or kind from that of parties in other civil suits.").

But rather than using the preexisting process to protect their trade secret information, instead, movants attempt to rewrite the Hope Act to include a device for sealing this record in its entirety—which allows them to proceed without conducting any review or analysis of the individual subject records. This maneuver will not comport with the decades-long tapestry of jurisprudence in Georgia that leans in favor of keeping court records unsealed.

IV. Significant Public Interest

Medical cannabis laws are of high public interest within this state and across the nation. [3] For the estimated 22,000 healthcare patients who are eligible for care under this law, the performance of the commission and its contractors is paramount. Georgia taxpayers have a legitimate interest in reviewing state government's stewardship of their money. And in order for the press to inform the public, it must be afforded access to every court record that is not properly exempt from access.

This significant public interest should be considered prior to any sealing of these records. "An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest." Rule 21.1-21.2; *see Atlanta Journal v. Long*, 258 Ga. 410, 413 (1988). The trial court must "weigh the harm to the privacy interest of that party from not sealing the pre-judgment documents against

[3] Russel, Dale, *Critics question why Georgia Access to Medical Cannabis Commission is exempt from Open Records*, Fox 5 Atlanta, October 7, 2021, available at: https://www.fox5atlanta.com/news/many-question-why-georgia-cannabis-commission-is-exempt-from-open-records.amp (last accessed July 3, 2022).

the harm to the public interest from sealing the documents. Before sealing the documents, the court must conclude that the former clearly outweighs the latter." *Id.* at 414 (emphasis added).

Ultimately, the future of medical cannabis and the laws surrounding it rests on the shoulders of Georgia's taxpayers, who, through their duly elected representatives, are the sovereigns of this state. It is the duty of the press to inform them:

> From the free flow of numerous ideas the sovereign ultimately chooses some, eliminates others, and directs the course of the state. Without the free flow of these ideas the state loses direction.
>
> The press plays a peculiar role in this process because it is through the press the ideas are reported to the sovereign. There is no other effective way to report to the sovereign than through the press. If the sovereign was an individual rather than the people collectively, it would be possible to employ special agents to gather ideas and facts from all sources and bring them to the sovereign. Obviously, this cannot be done effectively other than by means of mass communications when the sovereign is the mass of persons called the people. The sovereign has determined it is in the best interest of all that it receive these ideas.

Vaughn v. State, 381 S.E.2d 30, 32 (Ga. 1989) (Gregory, J., dissenting). The press obtains this information by inspection of court records, such as the ones at issue here. The interest of the press *is* the interest of the public.

It cannot be said that because this case concerns the financial or commercial information of private entities, that it is not also of public interest. Through misconduct or alleged misconduct, a private entity can become a legitimate public interest. *See Macon Tel. Pub. Co. v. Tatum,* 436 S.E.2d 655, 657 (Ga. 1993) (holding that a private citizen became "the object of a legitimate public interest" due to her misconduct, such that the newspaper could publish facts about her, including her name).

> The Georgia Constitution guarantees the freedom of the press. A free press is necessary to permit public scrutiny on the conduct of government and to ensure that government operates openly, fairly, and honestly. In first recognizing the right to privacy, this court noted that the right is unquestionably limited by the right to speak and print. For example, we held in *Waters* that the publication of photographs of a murder victim did

> not violate her mother's right to privacy since, where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one's legal right of privacy.

Tatum, 436 S.E.2d at 657 (internal citations and quotations omitted). By voluntarily applying for and receiving a license to perform a contracted government function, these private companies have taken on the corresponding responsibility of a higher standard of scrutiny. Their actions are now of legitimate public interest, especially considering the serious allegations that have emerged relating to their participation in the bidding process. While the movants may have an interest in keeping some information in the record sealed, it is in the best interest of the press—and in the best interest of the entire state—that these court records remain open and available to inspection.

Accordingly, the Foundation requests that this Honorable Court deny the pending Joint Motion to Seal, and that it subject any future requests for sealing to the rigorous process outlined by Rule 21, duly considering the strong public interest in favor of keeping the entire record open.

Respectfully submitted this 8th day of July, 2022.

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