

ORIGINAL

**IN THE SUPREME COURT OF OHIO**

In re: :  
Application of : Case No. 2014-1555  
Joseph Victor Libretti, Jr. :

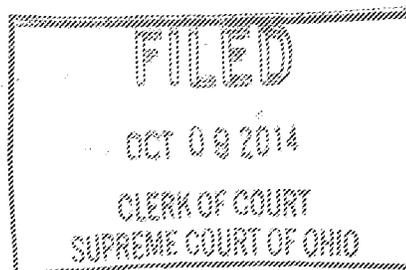
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APPLICANT JOSEPH V. LIBRETTI, JR.'S MOTION TO EXTEND SEAL  
PURSUANT TO GOV.BAR R.I, Section 12(C) and Sup. R. 45(E).

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Now comes the Applicant, Joseph Victor Libretti, Jr. and, pursuant to Gov. Bar R. I, Section 12(C) and Sup. R. 45(E), moves the Court for an Order extending the seal of the record in this matter for reasons of attorney-client privilege, medical and financial confidentiality, potential self-incrimination, embarrassment and injury to third parties, proprietary business information, and the potential harm that could result from the disclosure of grand jury testimony and other matters never intended for public access.

As the record in this case comprises approximately 800 pages with mention of the above items scattered and cross-referenced throughout, Applicant submits that a partial redaction would not be practical. Even within the hearing transcript, which is the only fully-indexed and electronically available portion of the record, the references do not always utilize the exact same vocabulary nor match the words that are utilized in the transcript index.



Applicant realizes that, even if the record in this matter were to be sealed from the public, it would of necessity be open for use by the Board of Commissioners on Character and Fitness and by this Court, and has attached a proposed Order that reflects those conditions.

A memorandum in support of Applicant's Motion is attached and incorporated herein.

Respectfully submitted,



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Deborah Zaccaro Hoffman (0071599)  
Law Office of Deborah Zaccaro Hoffman  
The Jefferson Centre Building  
5001 Mayfield Road, Suite 201  
Lyndhurst, Ohio 44124  
(216) 381-3400 (o)  
(216) 381-3856 (f)  
dzh@dzh-law.com (e)

## MEMORANDUM

Gov. Bar R.1 provides that:

“A record filed with the Clerk of the Supreme Court pursuant to Section 12(E) of this rule shall be filed under seal. After sixty days, the record shall become public unless the Supreme Court, on motion by the applicant or sua sponte, orders that the record or portions of the record remain confidential.”

Sup. R. 45(E)(2) provides that:

“A court shall restrict public access to information ... if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following: (a) Whether public policy is served by restricting public access; (b) Whether any state, federal, or common law exempts the document or information from public access; (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.”

Applicant hereby respectfully requests that the record in this matter remain sealed for all of the foregoing reasons, and for the following specific ones:

1. The record contains discussion of grand jury testimony (Tr. 23, Tr. 41, Tr. 42, Tr. 46, Tr. 121, Tr. 581, Tr. 582, and elsewhere), which is secret due to the possibility of reprisals against the person testifying, among other reasons.

Applicant submits that individuals testifying before a grand jury should not be placed at risk of injury due to disclosures made to the Board in a demonstration of candor.

2. The record contains discussion of a sealed indictment (Tr. 25 and elsewhere).

Applicant submits that matters previously sealed should not be released publicly due to disclosures to the Board made in a demonstration of candor.

3. The record contains discussion of the circumstances surrounding a criminal charge that resulted in an acquittal (Tr. 21, Tr. 104, Tr. 225, Tr. 247, and elsewhere).

Applicant submits that the subject of a not guilty finding should not have to be subjected to trial in the court of public opinion after being found not guilty in a court of law, due to disclosures to the Board made in a demonstration of candor.

4. The record contains information regarding Applicant's siblings that could prove embarrassing and injurious to their careers and reputations (Tr. 30, Tr. 50, Tr. 482, and elsewhere).

Applicant submits that his siblings should not be penalized due to disclosures to the Board made in a demonstration of candor.

5. The record contains information regarding the activities and death of Applicant's former roommate that could prove embarrassing and injurious to his surviving minor children (Tr. 448, Tr. 449, Tr. 451, Tr. 590, and elsewhere).

Applicant submits that the deceased's children should not be penalized due to disclosures to the Board made in a demonstration of candor.

6. The record contains information regarding the addiction and treatment history of other individuals that could prove embarrassing and injurious to their careers and reputations, and which would otherwise be protected under 42 U.S.C. §290dd-2 and 42 CFR Part 2 (Substance Abuse Confidentiality Regulations) (Tr. 50, Tr. 51, Tr. 114, Tr. 456, and elsewhere).

Applicant submits that other individuals should not be penalized due to disclosures to the Board made in a demonstration of candor.

7. The record contains Applicant's confidential medical information that would otherwise be protected under 45 CFR Parts 160 and 164 (the HIPAA Privacy Rule) (Tr. 106, Tr. 212, Tr. 213, Tr. 328-332, Tr. 435, and elsewhere).

Applicant submits that his confidential medical information should not be released publicly due to disclosures to the Board made in a demonstration of candor.

8. The record contains discussion and copies of Applicant's bank records and tax returns that would otherwise be protected under 15 U.S.C. §§6801-6809 (the Gramm-Leach-Bliley Act) (CMBA Ex. 85, 86, 89, Tr. 363-364, Tr. 368, Tr. 371, and elsewhere);

Applicant submits that his confidential financial information should not be released publicly due to disclosures to the Board made in a demonstration of candor.

9. The record contains proprietary business information regarding an Arizona LLC owned by an individual who is not a party to this case (Tr. 365-368 and elsewhere).

Applicant submits that the proprietary business information of a third party should not be released publicly due to disclosures to the Board made in a demonstration of candor.

10. The record contains disclosure of attorney-client privileged material that was disclosed to the Board in a demonstration of candor (Tr. 100, Tr. 340-342, Tr. 349, and elsewhere) as he was required to do under Ohio case law on bar admissions standards. See In re Davis, 38 Ohio St.2d at 274-275, 67 O.O.2d 344, 313 N.E.2d 363, which criticized the use of attorney-client privilege in the bar admissions process to conceal damaging yet salient character information. See also In re Cvammen, 102 Ohio St.3d 13 at 17, 2004-Ohio-1584, citing Davis with approval on this issue and requiring disclosure of “any information that possibly reflects on the applicant’s moral fiber and fitness to fulfill the position of trust in which an attorney is placed by his clients.” (Tr. 100, Tr. 340-342, Tr. 349, and elsewhere)

Applicant submits that it would undercut the integrity both of the admissions process and of the attorney-client privilege should information disclosed in good faith subsequently become publicly known and/or subject the discloser to liability, due to disclosures to the Board made in a demonstration of candor.

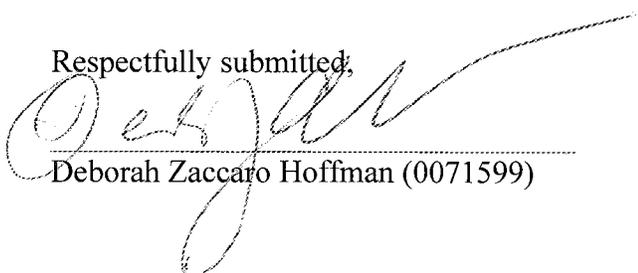
11. The Report contains inaccurate restatements of testimony taken at the hearing, an inaccurate summary of expenditures that Applicant objected to at the hearing, and an unsourced assertion not drawn from any evidence presented at the hearing. Applicant also respectfully seeks the opportunity to either correct or remove these statements through a Motion to Strike submitted herewith (CMBA Ex. 85, 86, 89, Report 3, 4, 8, 11, 13, and elsewhere).

These inaccuracies and insertions, along with much of the Report, which Applicant will address separately through Objections, are highly prejudicial to Applicant both in this process and in any future attempts to obtain employment outside of law.

For the above reasons, the record, including the present Motion, the Report, and all documents filed in this matter, should remain under seal.

WHEREFORE, Applicant respectfully requests that the proceedings in this matter remain under seal, except for access by the Board of Commissioners on Character and Fitness and this Court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Deborah Zaccaro Hoffman", written over a horizontal dotted line.

Deborah Zaccaro Hoffman (0071599)

**IN THE SUPREME COURT OF OHIO**

In re: :  
Application of : Case No. 2014-1555  
Joseph Victor Libretti, Jr. : ORDER

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This matter is pending before this Court upon the Report of the Board of Commissioners on Character and Fitness. On October 6, 2014, Applicant Joseph Victor Libretti, Jr. filed with this Court a Motion to seal the record in this case.

Upon consideration thereof, it is ordered by the Court that the Motion to Seal is granted in part. The record in this case shall remain sealed from the public but shall remain open for use by the Board of Commissioners on Character and Fitness and this Court.

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Chief Justice

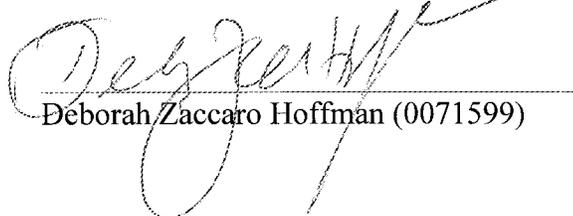
CERTIFICATE OF SERVICE

A true copy of the Motion to Extend Seal has been served by email (as to Paul G. Crist) and by U.S. mail (as to the Bar Admissions Committee) this 7<sup>th</sup> day of October, 2014 upon the following:

Paul G. Crist (0011894)  
2233 Wellington Circle  
Hudson, Ohio 44236  
pgcrist@yahoo.com  
Attorney for Cleveland Metropolitan  
Bar Association (CMBA)

Cleveland Metropolitan Bar Association  
Bar Admissions Committee  
1375 East 9<sup>th</sup> Street, Floor 2  
Cleveland, OH 44114-1785

Respectfully submitted,



Deborah Zaccaro Hoffman (0071599)

10/10/14