

**FILED**

SEP 04 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Shaccano*  
DEPUTY CLERK

FRANNY A. FORSMAN, ESQ.  
Nevada Bar No. 000014  
P.O. Box 43401  
Las Vegas, Nevada 89116  
(702) 501-8728  
[f.forsman@cox.net](mailto:f.forsman@cox.net)

RICHARD A. WRIGHT, ESQ.  
Nevada Bar No. 000886  
WRIGHT, STANISH & WINCKLER  
300 S. Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Counsel for Appellant:  
DIPAK KANTILAL DESAI

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DIPAK KANTILAL DESAI,

Appellant,

vs.

STATE OF NEVADA,

Respondents.

CASE NO. 64591

**MOTION FOR LEAVE TO FILE SEALED DOCUMENT**

Appellant Dipak Kantilal Desai by and through his attorneys, Franny A.

Forsman, Law Office of Franny Forsman PLLC and Richard A. Wright, Wright,

Stanish & Winckler, moves this court for permission to allow the filing of a sealed

SEP 04 2014  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

14-29331

document which is necessary for inclusion in the Appendix but which should not be made a part of the public record.

The document is a report prepared by the court-appointed medical evaluator, David Palestrant, M.D. and was originally filed, with permission of this court, as a sealed document in support of the Petition for extraordinary relief filed in Appeal No. 63046. This motion is based on the attached Points and Authorities and the Affidavit of Counsel filed in support of the previous Motion to Seal the document.

### POINTS AND AUTHORITIES

While there is a presumption in favor of public access to records filed with the court, this court has recognized that there are certain circumstances which would support the sealing of a document filed with this court. Appellant seeks to file the report of a court-appointed medical evaluator who reviewed Appellant's medical history, hospital records, medical testing and other highly personal and otherwise privileged documents. The report was ordered by the court to assist the court in determining whether competency proceedings should be conducted. The court did not conduct a competency inquiry. The lower court did not unseal the report.

This court has inherent authority to seal the document where "the public's right to access is outweighed by competing interests." Howard v. State, 291 P. 3d

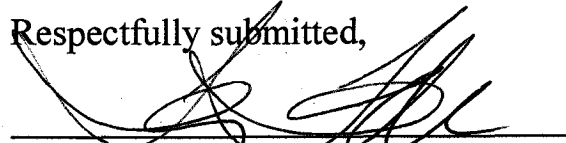
137, 141 (Nev. 2012).

Here, the public's right of access is outweighed by Appellant's privacy concerns. The information contained in the report contains numerous references to personal information with regard to hospitalizations, medical care, test results, occurring over years of medical treatment. Competency proceedings were never commenced based on the document. Public access to the document is not necessary for a public understanding of the issues presented in the appeal as pertinent parts of the document are referenced and quoted in Appellant's Brief.

Accordingly, Appellant requests that this court accept the report under seal as it did in Appeal No. 63046.

Dated this 2<sup>nd</sup> day of September, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Franny A. Forsman', is written over a horizontal line.

Franny A. Forsman, Esq.

Attorney for *Dipak Kantilal Desai*

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing Motion for Leave to  
File a Sealed Document by placing said document in the United States Mail on the  
2<sup>nd</sup> day of September, 2014, to the following address:

Steven S. Owens  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155

Catherine Cortez-Masto, Attorney General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

  
Kimberly LaPointe

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

I, Margaret M. Stanish, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada. My law partner, Richard A. Wright, and I are retained to represent Petitioner Dipak Desai in State v. Dipak Kantilal Desai, Case No. 10C265107 (8<sup>th</sup> Jud. Dist. Ct., Clark Cty. Nev.). I have personal knowledge of the proceeding and facts herein. I attest that the following is true and accurate to the best of my knowledge.

2. Our client, Dipak Desai suffered an acute stroke in July 2008. In March 2011, Desai was sent to Lake's Crossing following the determination of two court-appointed competency evaluators who deemed him to be incompetent. He was released from Lake's Crossing in October 2011, with a finding that he was then competent.

3. On February 24, 2013, Desai suffered multiple small strokes and was hospitalized until March 1, 2013. On this date, Mr. Wright informed the district court of the stroke and his doubt as to Petitioner's present competency to proceed to trial on April 22, 2013. By order dated March 9, 2013, the district court appointed David Palestrant, M.D., as an independent medical evaluator ("IME") to review Petitioner's past and recent medical records with the primary objective to determine the nature and extent of any changes to the Petitioner's brain from the date of his release from Lake's Crossing in October 2011, to the date upon which he was released from the hospital on March 1, 2013.

4. Late in the afternoon of April 15, 2013, the parties received a copy of the IME report and the undersigned is familiar with its context. At the calender call on April 16, 2013, the district court ruled that, based on its review of the IME

1 report, the request to stay the trial for competency proceedings was denied. The  
2 district court concluded that the stroke was minor and accommodations could be  
3 made for Desai's speech difficulties. The district court did not make the IME report  
4 a matter of public record at this juncture. Since the document contained private  
5 health care information and no competency evaluation was ordered, it was  
6 appropriate for the district court to maintain the confidentiality of the document.  
7 The IME report should remain confidential until such time that the district court  
8 decides to further review the matter. *See, Howard v. State*, 128 Nev. Adv. Op. 67,  
9 291 P.3d 137 (2012).

10 5. Based on the foregoing, Petitioner request that the Court authorize the  
11 filing of the IME report under seal. It is attached as Exhibit 3 to the Petition for  
12 Writ of Mandamus to Compel Determination Or, Alternatively, An Evidentiary  
13 Hearing on the Existence of Doubt as to Competency, which is filed simultaneously  
14 with this motion

15 I declare under penalty of perjury that the foregoing is true and correct. (NRS  
16 53.045).

17   
18 MARGARET M. STANISH  
19

20 SUBSCRIBED and SWORN to before me on  
21 this 22d day of April 2013 in said State and County.

22   
23 NOTARY PUBLIC  
24  
25  
26  
27  
28