

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY,
FLORIDA

DIVISION: L

IN RE: ALL PENDING CIVIL CASES
ASSIGNED TO DIVISION L

**DIVISION L STANDING ORDER ON DISCLOSURE OF PROTECTED
HEALTH INFORMATION UNDER THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of 18, 26, 29 and 42 U.S.C.) authorizes an entity covered by federal regulations to disclose protected health information in response to a subpoena, discovery requests, or other lawful process under certain circumstances see 45 C.F.R. parts 160-164; and A qualified protective order is a court order or stipulation by the parties to litigation that prohibits the parties from using or disclosing protected health information for any purpose other than the litigation and requires the information to be returned or destroyed at the conclusion of the litigation; and The many requests the Court receives for such orders make it desirable to have a form qualified protective order and order to disclose protective health information available to the litigants and the Bar to reduce the demand for hearing time and facilitate Division L's meet and confer requirement; it is therefore,

ORDERED:

1. The form HIPAA Qualified Protective Order and Order to Disclose Protected Health Information, attached hereto as **Exhibit "A"**, is made available for use in all cases assigned to Division L. In addition, a copy of the Order in Word format can be found on the Court's website. Any deviation from this form should be brought to the court's attention by the party seeking the order.

2. This administrative order does not limit the discretion of the trial judge to enter other appropriate orders in matters before the Court.

3. Where a party who obtains protected health information from a covered entity by subpoena, other discovery, or in response to a qualified protective order, and the party files such information with the Court, the party shall identify such information to the Clerk of the Circuit Court for sealing. A separate order sealing the records is not required. Discovery shall only be filed with the Court in accordance with the Florida Rules of Procedure.

4. Any party who obtains protected health information from a covered entity where such information is admitted into evidence shall identify such information to the Court and the Clerk of the Circuit Court for a determination by the Court at that time whether the evidence will be sealed.

5. The Clerk of Circuit Court shall retain protected health information identified by the parties in the court file or received into evidence by the Court in accordance with Rule of Judicial Administration 2.420 and shall destroy such records in accordance with Rule of Judicial Administration 2.425 and applicable federal regulations.

DONE AND ORDERED in Chambers, at Melbourne, Brevard County, Florida, this
____ day of _____, 20__.

CURT JACOBUS
CIRCUIT JUDGE

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: 05-20 __-CA-_____

Plaintiff(s),

V.

Defendant(s).

_____ /

**ORDER ON DEFENDANT(S)' MOTION FOR A HIPAA QUALIFIED
PROTECTIVE ORDER AND ORDER TO DISCLOSE PROTECTED HEALTH
INFORMATION**

This matter came before the Court on Defendant's, _____,
Motion for Qualified Protective Order as to the Plaintiff(s) _____,
pursuant to the Federal Health Insurance Portability and Accountability Act of 1996
(HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (codified and amended in scattered
sections of 18, 26, 29 and 42 U.S.C.). The Court having been advised of the argument of
counsel, legal authority, and being otherwise fully advised, it is **ORDERED AND
ADJUDGED** as follows:

1. Defendant's Motion is hereby **GRANTED**.

Qualified Protective Order

2. The HIPAA Qualified Protective Order entered by the Court shall not supersede, or in any way alter, amend, or suspend the rights and protections of the litigants in this case as it concerns the rules of discovery set forth in the Florida Rules of Civil Procedure, as well as case law interpreting those rules as it concerns objections to HIPAA protected information based upon scope, privacy, relevancy, privilege and other applicable objections.

3. Based upon the QPO and commencing immediately from the date of this QPO, all persons, including but not limited to physicians and other medical providers,

- a. Shall comply with any and all subpoenas for records without deposition pursuant to Florida Rule of Civil Procedure 1.351 to which no objection has been timely filed as well as other subpoenas served upon them at any future time in the course of this litigation; and
- b. Are authorized and ordered to use or disclose PHI in response to said subpoenas.

4. In accordance with and defined by the regulations promulgated under HIPAA, specifically 45 C.F.R section 164.512(e)(1)(i), (ii)(B) and (v), the Court hereby enters a HIPAA Qualified Protective Order ("QPO"). Pursuant to this QPO, all parties to this lawsuit are:

- a. Prohibited from using or disclosing protected health information (PHI) for any purpose other than the litigation of the above-styled lawsuit; and

- b. Required to destroy all copies of the PHI or to return them to the disclosing entity at the conclusion of the above-styled lawsuit.

5. For purposes of this QPO, "conclusion" is understood to include the time for any records retention requirement and statute of limitations applicable to a party or a party's counsel. "Litigation" is understood to include all appellate proceedings or the expiration of time to commence such appellate proceedings without appeal.

**Authorization and Order to Disclose PHI in the
Course of Discovery and Judicial Proceedings
(Order to Disclose)**

6. Additionally, pursuant to 45 C.F.R. section 164.512(e)(1)(i) and for purposes of HIPAA compliance, and without waiver of any right to the prepayment of costs or any other appropriate objection or privilege that may be timely asserted, the attorneys, employees, agents, or designees of each party or each party's legal counsel in this case, and all duly noticed persons, are expressly and specifically **AUTHORIZED** and **ORDERED** to:

- a. respond to valid Interrogatories served pursuant to the Florida Rule of Civil Procedure in the above-styled matter seeking PHI;
- b. respond to valid Requests for Production served pursuant to the Florida Rules of Civil Procedure in the above-styled matter seeking PHI;
- c. respond to valid and timely Requests for Copies or Requests for Production from Non-Parties served pursuant to the Florida Rules of Civil Procedure in the above-styled matter for production of documents and things without deposition concerning PHI; and

- d. respond to each of a party's own experts who request, either orally or in writing, PHI for the purposes of reviewing the above-styled matter in whole or in part, regardless of whether the expert is a consulting or trial expert or is considered retained for compensation or not retained, by disclosing and providing such requested PHI.

7. Additionally, pursuant to 45 C.F.R. section 164.512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to the prepayment of costs or any other appropriate objection or privilege that may be timely asserted, each deponent duly noticed for deposition in the above-styled litigation, including but not limited to a party, a fact witness, a records custodian, an expert, or a healthcare provider of any type, is expressly and specifically **AUTHORIZED** and **ORDERED** to use or to disclose to the attorneys, agents, employees, and designees of each party or each party's legal counsel in this case the PHI of a party that is responsive to deposition questions or a valid subpoena duces tecum at such duly-noticed deposition in the above-styled litigation.

8. Additionally, pursuant to 45 C.F.R. section 164.512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to the prepayment of costs or any other appropriate objection or privilege that may be timely asserted, all witnesses duly appearing at, or subpoenaed for, any judicial proceeding related to this litigation, including but not limited to trial, are specifically and expressly **AUTHORIZED** and **ORDERED** to use and disclose the PHI of a party in any form at such judicial proceeding.

9. In compliance with both HIPAA and any applicable state law not preempted by HIPAA, the authorizations and orders set forth in paragraphs 6, 7, and 8 of

this Order to Disclose expressly includes PHI concerning psychological and mental health records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases if so requested.

10. The commands of the Court in paragraphs 6, 7, and 8 of this Order to Disclose are a separate authorization for use or disclosure of PHI in addition to, and potentially inclusive of, the use and disclosures authorized under paragraphs 3 and 4 of the QPO.

11. Violation of paragraphs 6, 7, or 8 of the Order to Disclose, may subject the non-complaint party, or that party's counsel, to sanctions, including but not limited to the costs and attorney's fees attributable to such non-compliance, the striking of evidence or testimony, or the striking of the party's claims or defense.

12. Pursuant to 45 C.F.R. section 164.512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to the prepayment of costs or any other appropriate objection of privilege that may be timely asserted, any person or entity authorized or ordered above to use or disclose PHI is expressly and specifically **AUTHORIZED** and **ORDERED** to do so with, to, or before any court reporter service, videographer service, translation service, photocopy service, document management service, records management service, graphics service, or other such litigation service, designated by a party or a party's legal counsel in this case. The protections and requirements of paragraph 4 of the QPO apply to such service providers. Each party or the party's legal counsel is charged with obtaining advance consent of such service to comply with this paragraph. Upon such consent, the service provider will be deemed to

have voluntarily submitted to this Court's jurisdiction during the pendency of the above-styled matter for purposes of enforcement of this paragraph, including but not limited to the imposition of such sanctions as may be appropriate for any non-compliance.

13. Except for business associate agreements (as defined by HIPAA) entered into by a party or a party's legal counsel for purposes of satisfying the requirements of paragraph 12 of the Order to Disclose, the uses and disclosures of PHI authorized under the Order to Disclose are separate from, and not to be deemed subject to, any business associate agreement that has been or will be executed by any party, any party's legal counsel, or any disclosing person or entity. No use or disclosure made pursuant to the Order to Disclose shall be deemed to require the execution of a business associate agreement (as defined by HIPAA). The intent of the Order to Disclose is that such business associate agreements, including any requirement for such agreements under the HIPAA regulations, should be construed as inapplicable to uses and disclosures under this Order and as limited only to uses and disclosures of PHI outside of the Order to Disclose.

14. Unless a motion for enforcement of the Order to Disclose has been filed in this case and remains pending at the time, the Order to Disclose shall expire upon the conclusion of the litigation as defined in Paragraph 5.

15. Nothing in the Order of Disclose or QPO shall permit the counsel for any party, other than the party representing the patient, to engage in ex parte communications with the healthcare provider, except for those communications necessary for compliance with any subpoena duces tecum.

16. This QPO and Order to Disclose are self-executing and effective upon entry.

17. A copy of this QPO and Order to Disclose shall be valid as an original.

18. The parties are also required to comply with the requirements set forth in Rule 1.351 Fla. R. Civ. P. as it concerns the discovery of PHI.

It is further ADJUDGED that within five days from the date of eservice of this Order, the Defendant shall:

- a. Furnish a copy of this Order to each self-represented party by U.S. Mail, first class, postage paid; and
- b. File a certificate signed by Defendant's counsel that delivery of this Order has been made as set forth herein.

DONE AND ORDERED at Viera, Brevard County, Florida, this DDDD.

JJJJ

I HEREBY CERTIFY that copies have been furnished to all counsel via the Florida e-Filing Portal this MMMM.

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