

NO. _____

	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff(s)	§	
	§	
vs.	§	_____ COUNTY, TEXAS
	§	
	§	
	§	
Defendant(s)	§	_____ JUDICIAL DISTRICT

HIPAA PROTECTIVE ORDER

The Court finds that the Health Insurance Portability and Accountability Act, 42 USCA § 210, and regulations promulgated thereunder (collectively “HIPAA”), require an order of this Court to enable attorneys’ access to and the parties’ use of certain confidential patient and other protected health information in this case.

Specifically, HIPAA regulations generally prohibit the disclosure of protected health information which is defined as “individually identifiable health information” or “protected health information.” See 45 C.F.R. 160.103, 164.102 and 164.502(a). Such information is collectively referred to herein as “Protected Health Information” or “PHI.” The Court finds that this case involves the exchange or disclosure of documents in discovery that contain or are likely to contain such Protected Health Information that would, absent an order of this Court, not be accessible by all attorneys representing parties in these consolidated cases. HIPAA regulations allow this Court to enter an order allowing such access:

- (1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order[.]

45 C.F.R. 614.512(e)(1)(i).

Therefore, the Court ORDERS the following:

1. This Order (“HIPAA Protective Order”) shall govern the parties and their attorneys’ access to and use of records of information in these consolidated cases that contains confidential and HIPAA-protected health information, including documents, reports, materials, testimony, transcripts, items, summaries, compilations, spreadsheets, and/or other information exchanged between the parties in discovery. For purposes of this HIPAA Protective Order, the term “Protected Health Information” shall include documents or electronically stored information (“ESI”) contained in any such documents, notes, summaries, pleadings or other papers containing or incorporating any information, whether derived from or contained in any documents.

2. Any party or third party that produces or exchanges information in this action and has a reasonable basis for claiming that such information constitutes Protected Health Information must designate such information as “HIPAA Protected Information.”

3. Documents, materials, or other written information identified as containing confidential patient-identifying information shall be identified by typing, stamping, or affixing on the face of each document the designation “Confidential” before or at the time of production or filing (or redesignation in the case of those documents, materials, or other written information already produced that are redesignated by agreement of the parties).

4. Documents, materials, or other written information identified as containing HIPAA Protected Information shall be identified by typing, stamping, or affixing on the face of each document the designation “HIPAA Protected Information” before or at the time of production or filing (or redesignation in the case of those documents, materials, or other written information already produced that are redesignated by agreement of the parties).

5. In the event that there is testimony that discusses confidential patient or Protected Health Information, the appropriate party shall designate such information as either “Confidential” or “HIPAA Protected Information” by notifying all parties before or during such testimony of the confidential nature of such testimony. Such party may require the reporter to label the portion of the transcript containing the information as “Confidential” or “HIPAA Protected Information.”

6. For Confidential or HIPAA Protected Information exchanged in computer readable or other electronic media such as CD-ROMs or thumb drives, a party shall designate such information as confidential HIPAA Protected Information by submitting with the information a written notice that such electronic media contains confidential or HIPAA Protected Information,

and by stamping or labeling each such CD-ROM or item containing such information as “Confidential” or “HIPAA Protected Information.”

7. A party’s inadvertent or unintentional failure to designate information as confidential or HIPAA Protected Information shall not be deemed a waiver in whole or in part of that party’s claim of confidentiality if the disclosing party takes prompt action (within 45 days) after discovering such omission to notify all parties in writing that such information constitutes confidential or HIPAA Protected Information. The receiving party(ies) shall take reasonable steps to see that the information is thereafter treated in accordance with its designation as confidential or HIPAA Protected Information.

8. Confidential or HIPAA Protected Information may only be accessed by and disclosed to the following persons: (a) court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court); (b) any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper; (c) a party, or an officer, director, or employee of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this action; (d) general counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary; (e) outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, including outside copying services, document management services and graphic services; (f) any person who is retained or appointed by a party or its attorney to assist in representing the party, including any outside expert, consultant, or other technical advisor, but limited to persons who are reasonably necessary for development and presentation of the party’s case, and only after such person has been provided a copy of this HIPAA Protective Order, has acknowledged his/her willingness to abide by the terms of the HIPAA Protective Order by executing an Agreement concerning material covered by the HIPAA Protective Order in the form attached hereto as Exhibit “B,” and a copy of the executed Agreement has been provided to the producing party; (g) any witness who will testify at a deposition or trial, but only after such person has been provided a copy of this HIPAA Protective Order, has acknowledged his/her willingness to abide by the terms of the HIPAA Protective Order by executing an Agreement concerning material covered by the HIPAA Protective Order in the form

attached hereto as Exhibit “A,” and a copy of the executed Agreement has been provided to the producing party; and (h) any other person the producing party specifically identifies and confirms in writing or on the record may have access to materials it has designated as HIPAA Protected Information, but only after such person has been provided a copy of this HIPAA Protective Order, has acknowledged his/her willingness to abide by the terms of this HIPAA Protective Order by executing an Agreement concerning material covered by this Order in the form attached hereto as Exhibit “A,” and a copy of the executed Agreement has been provided to the producing party.

9. All parties and other persons to whom HIPAA Protected Information is disclosed shall maintain the confidentiality of all confidential and HIPAA Protected Information, shall not disclose such information to any other person or entity except as expressly permitted under this HIPAA Protective Order, or as required by law, and under all circumstances shall not use or disclose confidential or HIPAA Protected Information for any purpose other than in the litigation of this action.

10. The parties and their attorneys may use Confidential and HIPAA Protected Information in discovery responses, motions, briefs, and other pleadings. If a party wishes to include a document or portions of a document marked as Confidential or HIPAA Protected Information in a pleading or other paper to be filed with the Court, that party shall file the pleading or other paper with the Confidential or HIPAA Protected Information redacted or otherwise not included. The filing party shall serve the complete pleading or other paper containing the Confidential or HIPAA Protected Information on opposing parties. Following service, no party shall file the Confidential or HIPAA Protected Information with the Court except pursuant to a ruling on a motion for a Temporary Sealing Order or Sealing Order under Texas Rule of Civil Procedure Rule 76a. If a party wishes to offer a document, or portions of a document marked as HIPAA Protected Information into evidence, any party may, at the time the document is offered, move for a Temporary Sealing Order.

11. Except for Court personnel, no envelopes containing Confidential or HIPAA Protected Information shall be opened without an order from this Court identifying the person or persons who may have access to the sealed information and specifically identifying which portions of the Confidential or HIPAA Protected Information may be revealed to them.

12. A party desiring to use Confidential or HIPAA Protected Information or documents during oral argument in open court shall so notify the other parties, and the parties (and, if

applicable, third parties) shall attempt in good faith to agree upon a suitable procedure for determining how such Confidential or HIPAA Protected Information can be used in open court. If the parties (and, if applicable, third parties) cannot reach agreement, the party desiring to use Confidential or HIPAA Protected Information may request a conference with the Court to determine how such information can be used in open court.

13. Storage, transmission or communication of Confidential or HIPAA Protected Information must be such as reasonable to ensure that the Confidential or HIPAA Protected Information will not be disclosed, accidentally or otherwise, to non-authorized persons.

14. If at any time during the pendency of this action, any party claims that another party has designated information as Confidential or HIPAA Protected Information in a manner inconsistent with this Order, the objecting party may, after a good faith attempt to resolve (both orally and in writing) the dispute with such other party, file an appropriate motion with this Court requesting that specifically-identified information be excluded from the provisions of this HIPAA Protective Order. Pending the Court's resolution of any such motion, however, the information at issue shall retain its designation (and all associated protections and conditions) as Confidential or HIPAA Protected Information. The burden of showing that a document or any information produced by a party is or is not Confidential or HIPAA Protected Information is upon the party opposing the "Confidential" or "HIPAA Protected Information" designation.

15. If any person or entity that is not a named a party to this proceeding seeks access to Confidential or HIPAA Protected Information from any party to this action (other than from the party that produced the said information) by serving a subpoena, court order, request, or regulatory order issued by any court, or any administrative or legislative body, or any other person or entity purporting to have authority to subpoena or order the production of such information, the party to whom the subpoena or order is directed shall provide prompt notice of the subpoena or order to the party that produced the Confidential or HIPAA Protected Information. In addition, the party to whom the subpoena or order is directed shall not produce such information until that party first (a) promptly notifies the party that produced the Confidential or HIPAA Protected Information of the subpoena or order, (b) informs the person or entity on behalf of whom the subpoena or order was issued of the existence of this HIPAA Protective Order entered by the Court, and (c) allows counsel for the party that produced the Confidential or HIPAA Protected Information a reasonable opportunity to object thereto, or to move to quash or modify the subpoena or order. In the event

of an inadvertent disclosure of another party's Confidential or HIPAA Protected Information, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (a) notify the person to whom the disclosure was made that it contains Confidential or HIPAA Protected Information subject to this HIPAA Protective Order; (b) make all reasonable efforts to preclude dissemination or use of the HIPAA Protected Information by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the person; and (c) notify the producing party of the identity of the person to whom the inadvertent disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

16. This HIPAA Protective Order shall not prejudice the right of any party hereto to seek relief from or modification of any provision contained herein by motion to the Court with reasonable notice to the other parties.

17. The parties shall, promptly after the conclusion or termination of this litigation, including all appeals, destroy all Confidential and HIPAA Protected Information they received from any party or from its inclusion in the administrative record.

SO ORDERED this ____ day of _____, 20__.

HON.
JUDGE PRESIDING

EXHIBIT A

HIPAA PROTECTED DISCLOSURE AGREEMENT

I, _____[print name], the undersigned, hereby acknowledge that I have received a copy of, and have read, understand, and agree to comply with and be bound by the terms of the attached HIPAA Protective Order entered by the Court in the case styled _____, Case No. _____ in the _____ District Court for _____ County, Texas. I will keep confidential and not disclose any Confidential or HIPAA Protected Information (as those terms are defined in the HIPAA Protective Order) provided to me pursuant to the terms of the HIPAA Protective Order. I shall use such Confidential and/or HIPAA Protected Information for no purpose other than rendering assistance to counsel in this matter and/or in conjunction with my testimony in this action if I am called to testify. I will neither make nor retain copies of any Confidential or HIPAA Protected Information subject to the HIPAA Protective Order, and I will return to counsel any Confidential and/or HIPAA Protected Information that I received after I have completed my assigned duties or otherwise upon request. I will notify any authorized clerical or other personnel who may assist me of the terms of the HIPAA Protective Order, and I will be personally responsible to ensure that they also comply with the terms thereof. I hereby submit to the jurisdiction of this Court for purposes of resolving any issues relating to the HIPAA Protective Order entered in this action. I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date