From:	Cynthia Kisser
To:	Amy Bowne
Subject:	FW: Comments regarding Proposal 18-01
Date:	Friday, May 31, 2019 11:21:25 AM
Attachments:	Haage opinon.pdf Haage protective order.PDF Surlock opinion.pdf Surlock protective order.PDF

Illinois Supreme Court Rules Committee
Attention: Amy Bowne

Dear Committee Members:

Many attorneys have already provided comments to this Committee that clearly identify why proposal 18-1 to amend Supreme Court 218 should not be adopted. They have also identified reasonable criteria for a uniform HIPAA-compliant court order for personal injury cases statewide, as well as criteria that should not be included because contravenes applicable legal authority. I join those opposed to proposal 18-1, and to adoption by Illinois courts of a form protective order modeled after the proposal's sample uniform order requiring waiver by a plaintiff for release of all medical information, without qualification, as a condition of litigating a personal injury claim.

In summary, that proposal unequivocally demands a plaintiff waive his or her right to the privacy of *all* that plaintiff's medical records as a condition of bringing a personal injury claim. This requirement is contrary to the High Court's past finding that such blanket disclosure is unconstitutional, violating a plaintiff's right to privacy without regard to the issues being litigated. *Kunkel v. Walton,* 179 Ill.2d 519, 540 (1998), citing *Firebaugh v. Traff*, 353 Ill. 82, 84-95 (1933), in abrogating 735 ILCS 5/2-1003(a) for wrongly placing no limitation whatsoever on the scope of medical information subject to disclosure in a personal injury case.

Furthermore, the sample protective order submitted with proposal 18-01 is wrongly based on the false assertion by its proponents that authority exists requiring all personal healthcare information (PHI) of plaintiffs disclosed in litigation be kept by defense insurers for their use and benefit as profit-making entities after the litigation has ended. There simply is no such authority.

Likewise, there is no authority superior to that of the Health Insurance Portability and Accountability Act, Article I, Section 6 of the Illinois Constitution, Article IV of the U.S. Constitution, or a host of Illinois Acts[i] that can justify conditioning the right of access to Illinois courts guaranteed in Article I, Section 12 of its Constitution on the basis that PHI unrelated to an injury at issue in a personal injury claim can be required for such access.

The Committee has, perhaps, reviewed the attached well-reasoned opinions from the trial court in Lake County, refusing to grant the sample order in proposal 18-1, and the protective orders entered by that court instead as an alternative. These two near-identical orders are examples of how a protective order can meet the needs of all parties to a personal injury claim without unnecessarily sacrificing the privacy rights of the plaintiff.

I urge this Committee to adopt no rule that allows the courts in Illinois to enter a protective order in a personal injury case that that does not limit: i) the scope and time period for which a plaintiff's PHI can be obtained only to the injury at issue; ii) who has access to the PHI, or iii) which allows PHI to be kept and used by any party other than the plaintiff once the litigation has ended. Any amendment to Rule 218 adopted by this Committee must not result in violation of a plaintiff's constitutional and federal rights to privacy as a condition of the plaintiff seeking justice from the courts as to those who have caused his or her injury.

Respectfully submitted,

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[i] Among others, see, the Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq*.); the Aids Confidentiality Act (410 ILCS 305/1 *et seq*; the Alcoholism & Other Drug Abuse & Dependency Act (20 ILCS 301/30-5 *et seq*.)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

ROSEMARIE HAAGE)
)
)
Plaintiff,)
) 17 L 897
v.)
)
ALFONSO MONTIEL ZAVALA, PATRICIA)
SANTIAGO, JOSE PACHECO-VILLANUEVO,)
OKAN ESMEZ, and ROSALINA ESMEZ.)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiff's, Rosemarie Haage's, Motion for Entry of Protective Order and Authorization to Disclose Protected Health Information. Having heard arguments on the motion, considered the statutory authority and case law, and being fully advised in the premises, this Court now FINDS AS FOLLOWS:

Plaintiff has filed a complaint at law alleging negligence against the Defendants, along with resulting injury. During the course of litigation, Plaintiff filed a Motion For Entry of Protective Order and Authorization to Disclose Protected Health Information. Plaintiff attached a Proposed Order ("Order") and requested the court enter said Order.

Plaintiff states her Order follows the procedure set forth in HIPAA, which permits disclosures of PHI for judicial and administrative proceedings. 45 C.F.R. §164.512(e). Disclosures are permitted in response to an order of a court, or in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court if the

parties agree to a protective order and have presented it to the Court, or have asked the Court for a protective order. 164.512(e)(1). HIPAA requires that the protective order prohibit the use or disclosure of the protected health information for any purpose other than the litigation and requires the return or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding. 164.512(e)(1)(v)(A); 164.512(e)(1)(v)(B).

State Farm Mutual Automobile Insurance Company ("State Farm"), as Intervenor, filed its Objections to the Order, arguing it would place significant restrictions and obligations on it as Defendant's liability and casualty insurer. Specifically, State Farm objects to paragraphs 9 and 10 of the Order, on the basis that the restrictions set forth in the Order directly conflict with State Farm's obligations and rights under Illinois Law.

State Farm correctly observes that the Order would require it to return or destroy all PHI received pertaining to the Plaintiff in this case following the conclusion of this litigation. Also, the Order prevents State Farm from using any medical information put into its claim records for other lawful purposes that are expressly permitted or required by statutes or regulations applicable to State Farm's operations. As a result, State Farm maintains that, if it complies with the Order, it would fall short of its obligations under both the Illinois Insurance Code and Administrative Code to maintain a complete record of its claim files, thereby subjecting it to possible disciplinary action under Illinois law..

Particularly, State Farm cites to the IIC, 215 ILCS 5/1-1516, and the accompanying administrative code, 50 Ill. Admin. Code 101-9500, which regulate the business of insurance in Illinois. Illinois regulates the insurers' use of records, and also regulates their disposal and destruction. Regardless of the type of record or line of insurance, an insurer is authorized to:

> Dispose of or destroy records in its custody that are not needed;
> a) In the transaction of current business;

b) For the final settlement or disposition of any claim arising out of a policy of insurance issued by the company; or
c) To determine the financial condition of the company for the period since the date of the last examination report of the company officially filed with the Department of Insurance, except that these records must be maintained for at least 7 years.

50 Ill. Adm. Code 901.20, amended in, 40 Ill. Reg. 7895, eff. May 23, 2016.

Both the Illinois Insurance Code and the Administrative Code indicate that insurers are to maintain a complete record of all books, records and accounts, including claim files and claim data, and to make that information available upon request by the Illinois Department of Insurance for examination. 215 ILCS 5/133(2) and 5/132.4; 50 Ill. Adm. Code 919.30.

State Farm requests this court deny Plaintiff's Motion for Entry of the Proposed Medical Protective Order and adopt the form routinely used in the Circuit Court of Cook County under GAO 18-1. The Cook County order does not have the language contained in paragraphs 9 and 10 of Plaintiff's Proposed Order and inserts language that:

> Permit[s] insurance companies to receive PHI or what would otherwise be considered PHI from covered entities, business associates, and parties in litigation and to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI in conformity with all applicable federal laws and regulations and the Illinois Insurance Code and its accompanying rules and regulations; and

The Cook County order contains additional language permitting disclosures:

> To insurance companies to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI to comply and conform with current and future applicable federal and state statute, rules, and regulations for these purposes:
>
> 1. Reporting; investigating; evaluating; adjusting, negotiating, arbitrating, litigating, or settling claims;
> 2. Compliance reporting or filing;
> 3. Conduct described in 215 ILCS 5/1014;
> 4. Required inspections and audits;
> 5. Legally required reporting to private, federal, or state governmental organizations, including health or medical

insurance organizations, and to the Centers for Medicare and Medicaid Services (CMS);
6. Rate setting and regulation;
7. Statistical information gathering;
8. Underwriting, reserve, loss, and actuarial calculation;
9. Drafting policy language;
10. Workers' compensation; and
11. Determining the need for and procuring excess or umbrella coverage or reinsurance.

Plaintiff disputes State Farm's interpretation that these sections of Illinois law require them to keep medical records and PHI produced to State Farm that is reviewed and considered in connection with State Farm's payment and handling of insurance claims such as those pursued by Plaintiff. She argues that neither the Illinois Insurance Code nor the Illinois Administrative Code require the retention of PHI and suggests there has never been a disciplinary action taken against State Farm for failing to maintain PHI, despite tens of thousands of cases having HIPAA protective orders entered every year requiring the return or destruction of the records. Further, Plaintiff maintains that State Farm has failed to provide any guidelines or regulations requiring it to keep PHI for "business operations" and "certain insurance functions."

Preemption of State Law by HIPAA

However, if State Farm's argument is correct, that HIPAA requirements for a qualified protective order in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B) conflict with obligations and rights under Illinois law, then this court must determine whether the HIPAA requirements preempt Illinois state law requirements for State Farm.

The court begins its analysis with the bedrock principle that the Constitution designates the laws of the United States as the supreme law of the land, requiring that "all conflicting state provisions be without effect." *Maryland v. Louisiana,* 451 U.S. 725, 746, 101 S.Ct. 2114, 2128–29 (1981); *see also* U.S. Const. art. VI, cl. 2. Accordingly, where state and federal law directly

conflict, "state law must give way." *PLIVA, Inc. v. Mensing,* 131 S.Ct. 2567, 2577 (2011). In addition, "[t]here is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona v. United States,* 132 S.Ct. 2492, 2500–01 (2012). As the Supreme Court has explained, "[w]hen a federal law contains an express preemption clause, we focus on the plain wording of the clause," as the plain language of the text is "the best evidence of Congress' preemptive intent." *Chamber of Commerce of U.S. v. Whiting,* 131 S.Ct. 1968, 1977 (2011) (internal quotation omitted).

In drafting HIPAA, Congress included an express preemption provision. 42 U.S.C. § 1320d–7. HIPAA's preemption clause provides that the statute "shall supersede any contrary provision of State law," and lists certain exceptions that are not at issue here. *Id.* § 1320d–7(a). A state law is "contrary" to HIPAA if:

> (1) A covered entity or business associate would find it impossible to comply with both the State and Federal requirements; or
> (2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of ... section 264 of Public Law 104–191 ....

45 C.F.R. § 160.202. However, HIPAA, does not preempt state laws that provide "more stringent" privacy protections. *See id.* § 160.203(b).

As to the first element,, whether a covered entity would "find it impossible to comply with both the State and Federal requirements, State Farm has argued that it cannot comply with both the HIPAA requirements for a qualified protective order and Illinois law. Likewise, covered entities cannot comply with HIPAA if Illinois legal requirements for record retention and use of PHI are inserted into the qualified protective order. State Farm's suggested order allows insurance companies to disclose, maintain, use and dispose of PHI outside of the litigation

and does not require them to destroy or return the PHI at the end of litigation. This directly contrasts with the requirements of HIPAA. *See* 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B).

Adopting the Cook County language would result in a protective order that no longer contains the two requirements set forth in the HIPAA to allow a covered entity to disclose PHI in response to a subpoena, discovery request, or other lawful process. Without the requirements in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B), a covered entity no longer has a valid HIPAA qualified protective order to allow disclosure of PHI.

As to the second element, whether Illinois law is an "obstacle to the accomplishment and execution of the full purposes and objectives of [HIPAA section 264]," the court must consider Congress' intent. One of the congressional objectives in enacting HIPAA was to address concerns about the confidentiality of patients' individually identifiable health information. *See* Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104–191, § 264, 110 Stat. 1936; *see also S.C. Med. Ass'n v. Thompson,* 327 F.3d 346, 348, 354 (4th Cir.2003) ("Recognizing the importance of protecting the privacy of health information in the midst of the rapid evolution of health information systems, Congress passed HIPAA in August 1996."). To that end, Congress provided for the Secretary of Health and Human Services to promulgate privacy regulations addressing individuals' rights to individually identifiable health information, procedures for exercising such rights, and the uses and disclosures of such information. Pub.L. No. 104–191, § 264(b) & (c)(1); *S.C. Med. Ass'n,* 327 F.3d at 349. In compliance with the statute, the Department of Health and Human Services issued final regulations known as the "Privacy Rule." *S.C. Med. Ass'n,* 327 F.3d at 349; *see also Citizens for Health v. Leavitt,* 428 F.3d 167, 172–74 (3d Cir.2005) (detailing the history of the Privacy Rule's promulgation and explaining its requirements). As the Department explained when announcing

the Privacy Rule: "It is important to understand this regulation as a new federal floor of privacy protections that does not disturb more protective rules or practices.... The protections are a mandatory floor, which other governments and any covered entity may exceed." (65 Fed.Reg. 82471 (Dec. 28, 2000).)

In particular, Congress sought to protect patients' PHI during a judicial or administrative proceeding by allowing disclosure by subpoena, discovery request, or other lawful process only if satisfactory assurances that a qualified protective order has been sought. 45 C.F.R. §164.512(e). The Department stated such a qualified protective order would "guard the confidentiality of the information." 65 Fed. Reg. 82530 (December 28, 2000). In addition, the Department encouraged "the development of 'model' protective orders that [would] facilitate adherence with this subpart." *Id.*

State Farm's proposed Cook County order would eliminate the two requirements set forth by the Department for a qualified protective order and would not provide the confidentiality and protection of PHI envisioned when the Privacy Rule was enacted. Further, the Department anticipated the use of model orders and it set forth exactly what the model orders must include in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B). Instead of exceeding the protective rules of HIPAA, the state law requiring State Farm to maintain the PHI and allow disclosure outside of litigation impermissibly lowers the protective floor that Congress sought to provide in enacting HIPAA and certainly acts as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA.

Applying the plain language of HIPAA's express preemption clause, the Illinois laws cited by State Farm are preempted because they are contrary to HIPAA. A covered entity would find it impossible to comply with both the State and Federal requirements and the Illinois laws

are an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA section 264.[1]

Applicability of HIPAA to Liability Insurers

Additionally, State Farm states the Plaintiff's proposed order seeks to bind State Farm to the requirements of HIPAA when it is expressly exempt from the application of HIPAA. State Farm argues that it is not subject to the HIPAA regulations and must follow existing state insurance law and regulations governing insurers. While the court agrees that property and casualty liability insurers are not covered entities under HIPAA, such reasoning does not exempt State Farm from obeying a protective order entered by this court with respect to PHI which has been produced *by a covered entity.* Covered entities cannot disclose PHI in certain circumstances without a qualified protective order containing the provisions in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B).

All parties receiving the PHI are bound to follow the qualified protective order of the court regardless of whether they are a covered entity under HIPAA in the first instance. State Farm's logic amounts to stating they need not follow any order of the court with HIPAA provisions, since they are not a covered entity. The qualified protective order loses its effectiveness in protecting a patient's PHI if non-covered entities may ignore the restrictions required by HIPAA. Non-covered entities would broadly include attorneys, expert witnesses, casualty insurers, etc. It is obvious that Congress did not intend for attorneys and expert witnesses to be free to use PHI for their own private business purposes at the close of litigation,

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[1] The Court asked the parties to address the possible application of the McCarran-Ferguson Act, which prohibits federal preemption of state laws that regulate insurance, "unless the federal statute expressly announce[s] Congress' specific intention to inject itself into the area of state insurance law." *U.S. v. Rhode Island Insurers' Insolvency Fund*, 80 F.3d 616, 520 (1996). Neither party argued that the Act applied in this case. Therefore, this Court will not address the issue.

simply by virtue of the fact that they are non-covered entities under the Act. Accordingly, State Farm's status as a non-covered entity has no relevance as to whether the qualified protective order should be altered.

Alternatives to a Qualified Protective Order

Finally, State Farm argues that there are alternatives to issuing a qualified protective order under HIPAA. It deems the Plaintiff's proposed order a "court order" under 164.512(e)(1)(i), instead of a qualified protective order accompanying a subpoena, discovery request, or other lawful process under 164.512(e)(1)(ii). However, there is no indication that Plaintiff's Motion was for a court order under 164.512(e)(1)(i). In fact, in both State Farm's Objection and Plaintiff's Reply, the arguments centered around a qualified protective order pursuant to 164.512(e)(1)(ii). While the HIPAA regulations do provide several different ways in which a covered entity is permitted to disclose PHI, Plaintiff has chosen to secure a qualified protective order under 164.512(e)(1)(ii). State Farm provided a good justification for this choice in its brief, "personal injury litigation often implicates HIPAA because parties seek to obtain medical information through discovery requests sent to claimants' health-care providers." Whether a different method could be used to permit disclosure is irrelevant as to whether the qualified protective order at issue should be changed to avoid conflict with State Farm's alleged obligations and rights under Illinois Law.

CONCLUSION

State Farm's justification for the proposed alteration of Plaintiff's requested qualified protective order is a conflict between HIPAA requirements and Illinois insurance law regarding the use and retention of Plaintiff's PHI. However, HIPAA has an express preemption clause that, when applied to this matter, acts to preempt the Illinois laws which would otherwise

obligate or permit State Farm to keep and maintain the PHI well after the litigation has ended. State Farm's other argument regarding its status as a non-covered entity under HIPAA fails to address the fact that, in the case at bar, State Farm would be receiving the PHI *from* a covered entity, and that all parties receiving PHI from a covered entity are subject to the requirements of a HIPPA protective order. Further, the Plaintiff has chosen to seek a qualified protective order, and State Farm's argument that a different method could be used to seek authorization has no bearing on the question currently before the court. Accordingly, this court denies State Farm's request to enter the Cook County order and grants Plaintiff's Motion for Entry of Protective Order and Authorization to Disclose Protected Health Information. So Ordered.

DATE: May 15th, 2019

ENTER: Mitchell L. Hoffman

Mitchell L. Hoffman,
Circuit Judge

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

ROSEMARIE HAAGE Plaintiff, v. ALFONSO MONTIEL ZAVALA, PATRICIA SANTIAGO JOSE PACHECO-VILLANUEVO, OKAN ESMEZ, and ROSALINA ESMEZ. Defendants.	)	No.: 17 L 897

FILED
MAY 16 2019
Erin Cartwright Weinstein
CIRCUIT CLERK

HIPAA PROTECTIVE ORDER

This court finds that this court order is necessary to:

1. Protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois Constitution for each party in this lawsuit;

2. Protect a party's right to remedy as guaranteed by article I, section 12 of the Illinois Constitution for each party in this lawsuit;

3. Ensure the parties' compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulation governing the disclosure, maintenance, use, and disposal of protected health information (PHI);

4. For the purposes of this HIPAA Protective Order, "protected health information" shall have the same scope and definition as set forth in 45 C.F.R. §160.103 and 164.501; Protected health information includes, but is not limited to: health information, including demographic information, relating to either (a) the past, present, or future physical or mental condition of an individual; (b) the provision of care of an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

5. Require covered entities, as defined in 45 C.F.R. 160.103, to disclose a party's PHI expressly provided in this Order as required pursuant to 45 C.F.R. 164.512(e) for use in this litigation without a separate disclosure authorization; however, nothing in this order relieves any covered entity, party, their attorneys, their attorneys' agents or representatives, consultants, other witnesses, and other personnel who request, receive, and/or review documents containing PHI, from complying with the additional requirements of:

The Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 et seq.);

The Aids Confidentiality Act (410 ILCS 305/1 et seq.);

Alcoholism & Other Drug Abuse & Dependency Act (20 ILCS 301/30-5 et seq.);

Federal law which protects certain drug and alcohol records (42 U.S.C. §§ 290dd-3, 290ee-3; 42 C.F.R. Part 2);

The Genetic Information Privacy Act (410 ILCS 513/15);

Physician and Patient, 735 ILCS 5/8-802(4);

Medical Patients Rights Act (410 ILCS 50/1 et seq); and

Any and all other applicable federal and state laws and regulations regulating or governing the request, review, or disclosure of PHI, to the extent such laws and regulations are not pre-empted by HIPAA.

6. Authorize the parties and their attorneys to receive, subpoena, and transmit PHI pertaining to Plaintiff, to the extent and subject to the conditions outlined herein;

7. Permit the parties and their attorneys to use or disclose Plaintiff's PHI for purposes of prosecuting or defending this action including any appeals in this case. This includes, but is not necessarily limited to, disclosure to their attorneys, experts, consultants, court personnel, court reporters, copy services, trial consultants, and other entities or persons involved in the litigation process.

8. Permit the parties and their attorneys to receive PHI from covered entities, business associates, and parties in litigation, provided that the covered entity, business associates, and parties in litigation disclose only the PHI expressly authorized in this Order.

9. Prohibit the parties and any other persons or entities from using or disclosing the PHI for any purpose other than the litigation or proceeding for which it was requested as required by 45 C.F.R. 164.512(e)(1)(v)(A);

10. Require the return of the PHI to the covered entity or the destruction of the information at the end of the litigation or proceeding as required by 45 C.F.R. 164.512(e)(1)(v)(B).

THIS COURT ORDERS THE FOLLOWING:

1. The PHI of any party in this lawsuit may not be disclosed for any reason without that party's prior written consent or an Order of this court specifying the scope of the PHI to be disclosed, the recipients of the disclosed PHI, and the purpose of the disclosure. No consent to disclosure shall constitute a consent to re-disclosure unless so specified in detail.

2. Pursuant to 45 C.F.R. § 164.512(e)(1)(i) No subpoenas for information or tangible items pertaining to Plaintiff shall be served by Defendant without Court Order, unless by prior

agreement of counsel. No subpoena for "any and all" records shall issue; rather, any subpoena must specifically be restricted to five (5) years prior to the incident and relate to the condition and portions of Plaintiff's body complained of; specifically, her back, hip and lower extremities.

3. Any subpoena may issue only upon no less than fourteen days notice to Plaintiff. Defendant shall provide a copy of records received in response to any subpoena to all parties within seven days of receipt of records. Defendant shall provide a copy of records received in response to any subpoena to all parties within seven days of receipt of records.

4. The only disclosures permitted by this Order are these:

   A. All patients/parties whose PHI is subject to disclosure are presumed to have opted out of any disclosure or maintenance of PHI to any Health Information Exchange, however called, and whether or not such Health Information Exchange or similar informational depository is licensed in Illinois;

   B. As ordered by this or another court or arbitral body or by subpoena with reasonable notice to the parties attorney of record in the instant matter or their designee, for purposes of subrogation, reimbursement, or payment of liens arising out of or related to this lawsuit;

   C. To the parties of this lawsuit and their agents; and

   D. As necessary to comply with any other federal or state laws, rules, or regulations, but only to the extent that each comply with the requirements set forth by HIPAA or have more stringent protection not pre-empted by HIPAA.

6. Any covered entity over which this court has jurisdiction that fails or refuses to disclose PHI in accordance with this Court Order may be subject to all sanction authorized by the Code of Civil Procedure and the Illinois Supreme Court rules.

7. A party to this lawsuit may provide PHI to an undisclosed consulting expert or controlled expert witness as defined in Illinois Supreme Court Rule 213(f)(3), but only after receiving written acknowledgement that each such expert or witness agrees to be bound by the terms of this order. Counsel shall take all other reasonable steps to ensure that persons receiving Plaintiff's PHI do not use or disclose such information for any purpose other than this litigation.

8. Within 60 days after the conclusion of the litigation, including appeals, the parties, their attorneys, insurance companies and any person or entity in possession of PHI received pursuant to this Order, shall return Plaintiff's PHI to the covered entity or destroy any and all copies of PHI pertaining to Plaintiff, including any electronically stored copy or image, except that counsel are not required to secure the return or destruction of PHI submitted to the Court. "Conclusion of the Litigation" shall be defined as the point at which final orders disposing of the entire case as to any Defendant have been entered, or the time at which all

trial and appellate proceedings have been exhausted as to any Defendant. . Proof of destruction/deletion of all protected health information and copies thereof which have not been filed with the Court may be made by affidavit of counsel of record, filed with the Court and opposing counsel.

9. The parties are prohibited from including or attaching PHI to any document filed with the Clerk of the Circuit Court without leave of Court. PHI necessary for the court's consideration of any matter must be provided separately. Any party receiving the Court's permission to attach any PHI to a document to be filed with the Clerk of the Circuit Court shall identify such information to the Clerk of the Court for sealing of the information and Clerk shall so seal such information. A separate order sealing the records shall not be required.

10 Protected health information admitted into evidence shall be sealed at the close of the proceeding in which the evidence was admitted. Disclosures pursuant to this Order shall cease at the close of the proceeding or termination of the litigation or arbitration.

11. Other than the party whose PHI is at issue or that party's attorneys, no parties or their agents are permitted to request, obtain, or disclose PHI or any other type of medical bills, records, or related information other than through the formal discovery procedures authorized by the Code of Civil Procedure, Illinois Supreme Court rules, and orders of this court.

12. All requests by or on behalf of any Defendant for protected health information, including but not limited to subpoenas, shall be accompanied by a complete copy of this Order. The parties—including their insurers and counsel—are prohibited from using or disclosing protected health information for any purpose other than this litigation. "Disclose" shall have the same the same scope and definition as set forth in 45 C.F.R. §160.103: "the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information."

13. If any party utilizes the services of a third-party to issue any subpoena for protected health information of Plaintiff, it shall be the requesting party's obligation to ensure that this order is complied with by the third party; including that the issuing subpoena and any accompanying correspondence comply with this Order.

14. This Court retains jurisdiction of the case after judgment or dismissal, for the purposes of ensuring compliance with this Order.

JUDGE

Mitchell L. Hoffman

Date:

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

LAKE COUNTY, ILLINOIS

AGNIESZKA SURLOCK and EDWARD SURLOCK	)	
Plaintiffs,	)	18 L 39
v.	)	
DRAGOSLAV STARCEVIC	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiffs', Agnieszka Surlock and Edward Surlock, Motion for Entry of Protective Order and Authorization to Disclose Protected Health Information. Having heard arguments on the motion, considered the statutory authority and case law, and being fully advised in the premises, this Court now FINDS AS FOLLOWS:

Plaintiffs have filed a complaint at law alleging negligence against the Defendant, along with resulting injury. During the course of litigation, Plaintiffs filed a Motion For Entry of Protective Order and Authorization to Disclose Protected Health Information. Plaintiffs attached a Proposed Order ("Order") and requested the court enter said Order.

Plaintiffs state their Order follows the procedure set forth in HIPAA, which permits disclosures of PHI for judicial and administrative proceedings. 45 C.F.R. §164.512(e). Disclosures are permitted in response to an order of a court, or in response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court if the parties agree to a protective order and have presented it to the

Court, or have asked the Court for a protective order. 164.512(e)(1). HIPAA requires that the protective order prohibit the use or disclosure of the protected health information for any purpose other than the litigation and requires the return or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding. 164.512(e)(1)(v)(A); 164.512(e)(1)(v)(B).

State Farm Mutual Automobile Insurance Company ("State Farm"), as Intervenor, filed its Objections to the Order, arguing it would place significant restrictions and obligations on it as Defendant's liability and casualty insurer. Specifically, State Farm objects to paragraphs 9 and 10 of the Order, on the basis that the restrictions set forth in the Order directly conflict with State Farm's Obligations and rights under Illinois Law.

State Farm correctly observes that the Order would require it to return or destroy all PHI received pertaining to the Plaintiffs in this case following the conclusion of this litigation. Also, the Order prevents State Farm from using any medical information put into its claim records for other lawful purposes that are expressly permitted or required by statutes or regulations applicable to State Farm's operations. As a result, State Farm maintains that, if it complies with the Order, it would fall short of its obligations under both the Illinois Insurance Code and Administrative Code to maintain a complete record of its claim files, thereby subjecting it to possible disciplinary action under Illinois law.

Particularly, State Farm cites to the IIC, 215 ILCS 5/1-1516, and the accompanying administrative code, 50 Ill. Admin. Code 101-9500, which regulate the business of insurance in Illinois. Illinois regulates the insurers' use of records, and also

regulates their disposal and destruction. Regardless of the type of record or line of insurance, an insurer is authorized to:

> Dispose of or destroy records in its custody that are not needed;
> a) In the transaction of current business;
> b) For the final settlement or disposition of any claim arising out of a policy of insurance issued by the company; or
> c) To determine the financial condition of the company for the period since the date of the last examination report of the company officially filed with the Department of Insurance, except that these records must be maintained for at least 7 years.

50 Ill. Adm. Code 901.20, amended in, 40 Ill. Reg. 7895, eff. May 23, 2016.

Both the Illinois Insurance Code and the Administrative Code indicate that insurers are to maintain a complete record of all books, records and accounts, including claim files and claim data, and to make that information available upon request by the Illinois Department of Insurance for examination. 215 ILCS 5/133(2) and 5/132.4; 50 Ill. Adm. Code 919.30.

State Farm requests this court deny Plaintiffs' Motion for Entry of the Proposed Medical Protective Order and adopt the form routinely used in the Circuit Court of Cook County under GAO 18-1. The Cook County order does not have the language contained in paragraphs 9 and 10 of Plaintiffs' Proposed Order and inserts language that:

> Permit[s] insurance companies to receive PHI or what would otherwise be considered PHI from covered entities, business associates, and parties in litigation and to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI in conformity with all applicable federal laws and regulations and the Illinois Insurance Code and its accompanying rules and regulations; and

The Cook County order contains additional language permitting disclosures:

To insurance companies to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI to comply and conform with current and future applicable federal and state statute, rules, and regulations for these purposes:

1. Reporting; investigating; evaluating; adjusting, negotiating, arbitrating, litigating, or settling claims;
2. Compliance reporting or filing;
3. Conduct described in 215 ILCS 5/1014;
4. Required inspections and audits;
5. Legally required reporting to private, federal, or state governmental organizations, including health or medical insurance organizations, and to the Centers for Medicare and Medicaid Services (CMS);
6. Rate setting and regulation;
7. Statistical information gathering;
8. Underwriting, reserve, loss, and actuarial calculation;
9. Drafting policy language;
10. Workers' compensation; and
11. Determining the need for and procuring excess or umbrella coverage or reinsurance.

Plaintiffs dispute State Farm's interpretation that these sections of Illinois law require them to keep medical records and PHI produced to State Farm that is reviewed and considered in connection with State Farm's payment and handling of insurance claims such as those pursued by Plaintiffs. They argue that neither the Illinois Insurance Code nor the Illinois Administrative Code require the retention of PHI and suggests there has never been a disciplinary action taken against State Farm for failing to maintain PHI, despite tens of thousands of cases having HIPAA protective orders entered every year requiring the return or destruction of the records. Further, Plaintiffs maintain that State Farm has failed to provide any guidelines or regulations requiring it to keep PHI for "business operations" and "certain insurance functions."

Preemption of State Law by HIPAA

However, if State Farm's argument is correct, that HIPAA requirements for a qualified protective order in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B) conflict with obligations and rights under Illinois law, then this court must determine whether the HIPAA requirements preempt Illinois state law requirements for State Farm.

This Court begins its analysis with the bedrock principle that the Constitution designates the laws of the United States as the supreme law of the land, requiring that "all conflicting state provisions be without effect." *Maryland v. Louisiana,* 451 U.S. 725, 746, 101 S.Ct. 2114, 2128–29 (1981); *see also* U.S. Const. art. VI, cl. 2. Accordingly, where state and federal law directly conflict, "state law must give way." *PLIVA, Inc. v. Mensing,* 131 S.Ct. 2567, 2577 (2011). In addition, "[t]here is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona v. United States,* 132 S.Ct. 2492, 2500–01 (2012). As the Supreme Court has explained, "[w]hen a federal law contains an express preemption clause, we focus on the plain wording of the clause," as the plain language of the text is "the best evidence of Congress' preemptive intent." *Chamber of Commerce of U.S. v. Whiting,* 131 S.Ct. 1968, 1977 (2011) (internal quotation omitted).

In drafting HIPAA, Congress included an express preemption provision. 42 U.S.C. § 1320d–7. HIPAA's preemption clause provides that the statute "shall supersede any contrary provision of State law," and lists certain exceptions that are not at issue here. *Id.* § 1320d–7(a). A state law is "contrary" to HIPAA if:

> (1) A covered entity or business associate would find it impossible to comply with both the State and Federal requirements; or

> (2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of ... section 264 of Public Law 104–191 ....

45 C.F.R. § 160.202. However, HIPAA, does not preempt state laws that provide "more stringent" privacy protections. *See id.* § 160.203(b).

As to the first element, whether a covered entity would "find it impossible to comply with both the State and Federal requirements, State Farm has argued that it cannot comply with both the HIPAA requirements for a qualified protective order and Illinois law. Likewise, covered entities cannot comply with HIPAA if Illinois legal requirements for record retention and use of PHI are inserted into the qualified protective order. State Farm's suggested order allows insurance companies to disclose, maintain, use and dispose of PHI outside of the litigation and does not require them to destroy or return the PHI at the end of litigation. This directly contrasts with the requirements of HIPAA. *See* 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B).

Adopting the Cook County language would result in a protective order that no longer contains the two requirements set forth in the HIPAA to allow a covered entity to disclose PHI in response to a subpoena, discovery request, or other lawful process. Without the requirements in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B), a covered entity no longer has a valid HIPAA qualified protective order to allow disclosure of PHI.

As to the second element, whether Illinois law is an "obstacle to the accomplishment and execution of the full purposes and objectives of [HIPAA section 264]," the court must consider Congress' intent. One of the congressional objectives in enacting HIPAA was to address concerns about the confidentiality of patients' individually identifiable health information. See Health Insurance Portability and

Accountability Act of 1996, Pub.L. No. 104–191, § 264, 110 Stat. 1936; see also *S.C. Med. Ass'n v. Thompson*, 327 F.3d 346, 348, 354 (4th Cir.2003) ("Recognizing the importance of protecting the privacy of health information in the midst of the rapid evolution of health information systems, Congress passed HIPAA in August 1996."). To that end, Congress provided for the Secretary of Health and Human Services to promulgate privacy regulations addressing individuals' rights to individually identifiable health information, procedures for exercising such rights, and the uses and disclosures of such information. Pub.L. No. 104–191, § 264(b) & (c)(1); *S.C. Med. Ass'n*, 327 F.3d at 349. In compliance with the statute, the Department of Health and Human Services issued final regulations known as the "Privacy Rule." S.C. Med. Ass'n, 327 F.3d at 349; see also *Citizens for Health v. Leavitt*, 428 F.3d 167, 172–74 (3d Cir.2005) (detailing the history of the Privacy Rule's promulgation and explaining its requirements). As the Department explained when announcing the Privacy Rule: "It is important to understand this regulation as a new federal floor of privacy protections that does not disturb more protective rules or practices.... The protections are a mandatory floor, which other governments and any covered entity may exceed." (65 Fed. Reg. 82471 (Dec. 28, 2000).)

In particular, Congress sought to protect patients' PHI during a judicial or administrative proceeding by allowing disclosure by subpoena, discovery request, or other lawful process only if satisfactory assurances that a qualified protective order has been sought are made. 45 C.F.R. §164.512(e). The Department stated such a qualified protective order would "guard the confidentiality of the information." 65 Fed. Reg. 82530 (December 28, 2000). In addition, the Department encouraged "the

development of 'model' protective orders that [would] facilitate adherence with this subpart." *Id.*

State Farm's proposed Cook County order would eliminate the two requirements set forth by the Department for a qualified protective order and would not provide the confidentiality and protection of PHI envisioned when the Privacy Rule was enacted. Further, the Department anticipated the use of model orders and it set forth exactly what the model orders must include in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B). Instead of exceeding the protective rules of HIPAA, the state law requiring State Farm to maintain the PHI and allow disclosure outside of litigation impermissibly lowers the protective floor that Congress sought to provide in enacting HIPAA and certainly acts as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA.

Applying the plain language of HIPAA's express preemption clause, the Illinois laws cited by State Farm are preempted because they are contrary to HIPAA. A covered entity would find it impossible to comply with both the State and Federal requirements and the Illinois laws are an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA section 264.[1]

Applicability of HIPAA to Liability Insurers

Additionally, State Farm states the Plaintiffs' proposed order seeks to bind State Farm to the requirements of HIPAA when it is expressly exempt from the application of

[1] The Court asked the parties to address the possible application of the McCarran-Ferguson Act, which prohibits federal preemption of state laws that regulate insurance, "unless the federal statute expressly announce[s] Congress' specific intention to inject itself into the area of state insurance law." *U.S. v. Rhode Island Insurers' Insolvency Fund*, 80 F.3d 616, 520 (1996). Neither party argued that the Act applied in this case. Therefore, this Court will not address the issue.

HIPAA. State Farm argues that it is not subject to the HIPAA regulations and must follow existing state insurance law and regulations governing insurers. While the court agrees that property and casualty liability insurers are not covered entities under HIPAA, such reasoning does not exempt State Farm from obeying a protective order entered by this court with respect to PHI which has been produced *by a covered entity.* Covered entities cannot disclose PHI in certain circumstances without a qualified protective order containing the provisions in 164.512(e)(1)(v)(A) and 164.512(e)(1)(v)(B).

All parties receiving the PHI are bound to follow the qualified protective order of the court regardless of whether they are a covered entity under HIPAA in the first instance. State Farm's logic amounts to stating they need not follow any order of the court with HIPAA provisions, since they are not a covered entity. The qualified protective order loses its effectiveness in protecting a patient's PHI if non-covered entities may ignore the restrictions required by HIPAA. Non-covered entities would broadly include attorneys, expert witnesses, casualty insurers, etc. It is obvious that Congress did not intend for attorneys and expert witnesses to be free to use PHI for their own private business purposes at the close of litigation, simply by virtue of the fact that they are non-covered entities under the Act. Accordingly, State Farm's status as a non-covered entity has no relevance as to whether the qualified protective order should be altered.

Alternatives to a Qualified Protective Order

Finally, State Farm argues that there are alternatives to issuing a qualified protective order under HIPAA. It deems the Plaintiffs' proposed order a "court order"

under 164.512(e)(1)(i), instead of a qualified protective order accompanying a subpoena, discovery request, or other lawful process under 164.512(e)(1)(ii). However, there is no indication that Plaintiff's Motion was for a court order under 164.512(e)(1)(i). In fact, in both State Farm's Objection and Plaintiffs' Reply, the arguments centered around a qualified protective order pursuant to 164.512(e)(1)(ii). While the HIPAA regulations do provide several different ways in which a covered entity is permitted to disclose PHI, Plaintiffs have chosen to secure a qualified protective order under 164.512(e)(1)(ii). State Farm provided a good justification for this choice in its brief, "personal injury litigation often implicates HIPAA because parties seek to obtain medical information through discovery requests sent to claimants' health-care providers." Whether a different method could be used to permit disclosure is irrelevant as to whether the qualified protective order at issue should be changed to avoid conflict with State Farm's alleged obligations and rights under Illinois Law.

CONCLUSION

State Farm's justification for the proposed alteration of Plaintiffs' requested qualified protective order is a conflict between HIPAA requirements and Illinois insurance law regarding the use and retention of Plaintiff's PHI. However, HIPAA has an express preemption clause that, when applied to this matter, acts to preempt the Illinois laws which would otherwise obligate or permit State Farm to keep and maintain the PHI well after the litigation has ended. State Farm's other argument regarding its status as a non-covered entity under HIPAA fails to address the fact that, in the case at bar, State Farm would be receiving the PHI *from* a covered entity, and that all parties receiving PHI from a covered entity are subject to the requirements of a HIPPA

protective order. Further, the Plaintiffs have chosen to seek a qualified protective order, and State Farm's argument that a different method could be used to seek authorization has no bearing on the question currently before the court. Accordingly, this court denies State Farm's request to enter the Cook County order and grants Plaintiffs' Motion for Entry of Protective Order and Authorization to Disclose Protected Health Information.

So Ordered.

DATE: May 15, 2019

ENTER: DIANE E. WINTER

Diane E. Winter,
Circuit Judge

IN THE CIRCUIT COURT OF LAKE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AGNIESZKA SURLOCK and EDWARD SURLOCK	)	
Plaintiffs,	)	
	)	No. 18 L 39
vs.	)	
DRAGOSLAV STARCEVIC	)	
Defendant.	)	

HIPAA PROTECTIVE ORDER

This court finds that this court order is necessary to:

1. Protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois Constitution for each party in this lawsuit;

2. Protect a party's right to remedy as guaranteed by article I, section 12 of the Illinois Constitution for each party in this lawsuit;

3. Ensure the parties' compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulation governing the disclosure, maintenance, use, and disposal of protected health information (PHI);

4. For the purposes of this HIPAA Protective Order, "protected health information" shall have the same scope and definition as set forth in 45 C.F.R. §160.103 and 164.501; Protected health information includes, but is not limited to: health information, including demographic information, relating to either (a) the past, present, or future physical or mental condition of an individual; (b) the provision of care of an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

5. Require covered entities, as defined in 45 C.F.R. 160.103, to disclose a party's PHI expressly provided in this Order as required pursuant to 45 C.F.R. 164.512(e) for use in this litigation without a separate disclosure authorization; however, nothing in this order relieves any covered entity, party, their attorneys, their attorneys' agents or representatives, consultants, other witnesses, and other personnel who request, receive, and/or review documents containing PHI, from complying with the additional requirements of:

The Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 et seq.);

The Aids Confidentiality Act (410 ILCS 305/1 et seq.);

Alcoholism & Other Drug Abuse & Dependency Act (20 ILCS 301/30-5 et seq.);

Federal law which protects certain drug and alcohol records (42 U.S.C. §§ 290dd-3, 290ee-3; 42 C.F.R. Part 2);

The Genetic Information Privacy Act (410 ILCS 513/15);

Physician and Patient, 735 ILCS 5/8-802(4);

Medical Patients Rights Act (410 ILCS 50/1 et seq); and

Any and all other applicable federal and state laws and regulations regulating or governing the request, review, or disclosure of PHI, to the extent such laws and regulations are not pre-empted by HIPAA.

6. Authorize the parties and their attorneys to receive, subpoena, and transmit PHI pertaining to Plaintiff, to the extent and subject to the conditions outlined herein;

7. Permit the parties and their attorneys to use or disclose Plaintiff's PHI for purposes of prosecuting or defending this action including any appeals in this case. This includes, but is not necessarily limited to, disclosure to their attorneys, experts, consultants, court personnel, court reporters, copy services, trial consultants, and other entities or persons involved in the litigation process.

8. Permit the parties and their attorneys to receive PHI from covered entities, business associates, and parties in litigation, provided that the covered entity, business associates, and parties in litigation disclose only the PHI expressly authorized in this Order.

9. Prohibit the parties and any other persons or entities from using or disclosing the PHI for any purpose other than the litigation or proceeding for which it was requested as required by 45 C.F.R. 164.512(e)(1)(v)(A);

10. Require the return of the PHI to the covered entity or the destruction of the information at the end of the litigation or proceeding as required by 45 C.F.R. 164.512(e)(1)(v)(B).

THIS COURT ORDERS THE FOLLOWING:

1. The PHI of any party in this lawsuit may not be disclosed for any reason without that party's prior written consent or an Order of this court specifying the scope of the PHI to be disclosed, the recipients of the disclosed PHI, and the purpose of the disclosure. No consent to disclosure shall constitute a consent to re-disclosure unless so specified in detail.

2. Pursuant to 45 C.F.R. § 164.512(e)(1)(i) No subpoenas for information or tangible items pertaining to Plaintiff shall be served by Defendant without Court Order, unless by prior agreement of counsel. No subpoena for "any and all" records shall issue; rather, any

subpoena must specifically be restricted to five (5) years prior to the incident and relate to the condition and portions of Plaintiff's body complained of; specifically, her back, hip and lower extremities.

3. Any subpoena may issue only upon no less than fourteen days notice to Plaintiff. Defendant shall provide a copy of records received in response to any subpoena to all parties within seven days of receipt of records. Defendant shall provide a copy of records received in response to any subpoena to all parties within seven days of receipt of records.

4. The only disclosures permitted by this Order are these:

   A. All patients/parties whose PHI is subject to disclosure are presumed to have opted out of any disclosure or maintenance of PHI to any Health Information Exchange, however called, and whether or not such Health Information Exchange or similar informational depository is licensed in Illinois;

   B. As ordered by this or another court or arbitral body or by subpoena with reasonable notice to the parties attorney of record in the instant matter or their designee, for purposes of subrogation, reimbursement, or payment of liens arising out of or related to this lawsuit;

   C. To the parties of this lawsuit and their agents; and

   D. As necessary to comply with any other federal or state laws, rules, or regulations, but only to the extent that each comply with the requirements set forth by HIPAA or have more stringent protection not pre-empted by HIPAA.

6. Any covered entity over which this court has jurisdiction that fails or refuses to disclose PHI in accordance with this Court Order may be subject to all sanction authorized by the Code of Civil Procedure and the Illinois Supreme Court rules.

7. A party to this lawsuit may provide PHI to an undisclosed consulting expert or controlled expert witness as defined in Illinois Supreme Court Rule 213(f)(3), but only after receiving written acknowledgement that each such expert or witness agrees to be bound by the terms of this order. Counsel shall take all other reasonable steps to ensure that persons receiving Plaintiff's PHI do not use or disclose such information for any purpose other than this litigation.

8. Within 60 days after the conclusion of the litigation, including appeals, the parties, their attorneys, insurance companies and any person or entity in possession of PHI received pursuant to this Order, shall return Plaintiff's PHI to the covered entity or destroy any and all copies of PHI pertaining to Plaintiff, including any electronically stored copy or image, except that counsel are not required to secure the return or destruction of PHI submitted to the Court. "Conclusion of the Litigation" shall be defined as the point at which final orders disposing of the entire case as to any Defendant have been entered, or the time at which all trial and appellate proceedings have been exhausted as to any Defendant. . Proof of

destruction/deletion of all protected health information and copies thereof which have not been filed with the Court may be made by affidavit of counsel of record, filed with the Court and opposing counsel.

9. The parties are prohibited from including or attaching PHI to any document filed with the Clerk of the Circuit Court without leave of Court. PHI necessary for the court's consideration of any matter must be provided separately. Any party receiving the Court's permission to attach any PHI to a document to be filed with the Clerk of the Circuit Court shall identify such information to the Clerk of the Court for sealing of the information and Clerk shall so seal such information. A separate order sealing the records shall not be required.

10 Protected health information admitted into evidence shall be sealed at the close of the proceeding in which the evidence was admitted. Disclosures pursuant to this Order shall cease at the close of the proceeding or termination of the litigation or arbitration.

11. Other than the party whose PHI is at issue or that party's attorneys, no parties or their agents are permitted to request, obtain, or disclose PHI or any other type of medical bills, records, or related information other than through the formal discovery procedures authorized by the Code of Civil Procedure, Illinois Supreme Court rules, and orders of this court.

12. All requests by or on behalf of any Defendant for protected health information, including but not limited to subpoenas, shall be accompanied by a complete copy of this Order. The parties—including their insurers and counsel—are prohibited from using or disclosing protected health information for any purpose other than this litigation. "Disclose" shall have the same the same scope and definition as set forth in 45 C.F.R. §160.103: "the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information."

13. If any party utilizes the services of a third-party to issue any subpoena for protected health information of Plaintiff, it shall be the requesting party's obligation to ensure that this order is complied with by the third party; including that the issuing subpoena and any accompanying correspondence comply with this Order.

14. This Court retains jurisdiction of the case after judgment or dismissal, for the purposes of ensuring compliance with this Order.

JUDGE

DIANE E. WINTER

Date: