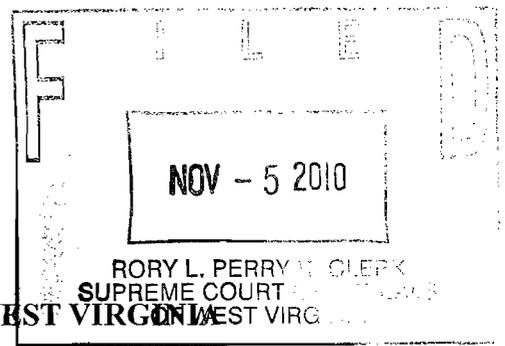


35738
NO. ~~10-1417~~



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE EX REL. STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner,

v.

THE HONORABLE THOMAS A. BEDELL, JUDGE
OF THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

Respondent.

From the Circuit Court of
Harrison County, West Virginia
Civil Action No. 09-C-67-2

BRIEF OF THE WEST VIRGINIA INSURANCE FEDERATION AS *AMICUS CURIAE*
IN SUPPORT OF STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY'S PETITION FOR *WRIT OF PROHIBITION*

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INTRODUCTION

The West Virginia Insurance Federation files this brief as *amicus curiae* because the Circuit Court erred in executing a Protective Order that, for a second time, forces insurance companies doing business in West Virginia to choose between complying with a Circuit Court Order or risk penalties, fines, or even suspension by ignoring the obligations owed to their regulator, the West Virginia Insurance Commissioner. This Protective Order--although correcting some issues regarding insurers' duties to maintain records--improperly forces insurers to withhold information from the Insurance Commissioner, which may help the Commissioner detect and prevent fraud. Because those obligations are imposed by statute and regulation, the Protective Order again places insurers in an untenable position.

For these reasons, and those contained herein, the West Virginia Insurance Federation respectfully urges this Court to accept the Petition and, ultimately, to reverse the Circuit Court's Order.

FACTUAL BACKGROUND

Although the Federation incorporates by reference the factual background as outlined by the Petitioner in its *Petition for Writ of Prohibition*, the Federation provides the following inasmuch as it relates to the limited issue in which the Federation has an interest.

In connection with a lawsuit stemming from an automobile accident which killed Lynn Robert Blank and injured Carla Blank in March 2008 and filed against the Estate of Jeremy Thomas and State Farm Mutual Automobile Insurance Company ("State Farm") in the Circuit Court of Harrison County, State Farm repeatedly requested the medical records of or an authorization for the release of the medical records of Carla Blank, Mr. Blank's wife and a passenger in the vehicle Mr. Blank was driving, because Mrs. Blank had also made a claim for her injuries. Mrs. Blank

refused and provided State Farm with a confidentiality agreement that State Farm and this Court deemed overly broad and restrictive.

Although State Farm was amenable to entering a protective order to safeguard the confidentiality of the medical information, Mrs. Blank's proposed order would have prohibited scanning the records and maintaining them electronically; required the return or destruction of them at the conclusion of the case; and limited access to them in such a way to inhibit State Farm's and the Insurance Commissioner's anti-fraud efforts.

On February 11, 2010, the Circuit Court of Harrison County issued a Protective Order. Although that Protective Order required Mrs. Blank to produce medical records, it established terms that, by any standard, were unduly restrictive and, importantly, conflicted with the West Virginia Insurance Commissioner's Rules and effectively turned the insurance industry's fraud prevention activities on its head. As a result, this Court reviewed the Protective Order and granted a Writ of Prohibition to prevent enforcement of the Circuit Court's Order. *State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell*, --- W. Va. ---, 697 S.E.2d 730 (2010).

After remand to the Circuit Court, the Court considered the issue again and issued a new Protective Order, attached as Exhibit A. That Order again ordered production of medical records but stated that State Farm was prohibited from sharing the records with any third party. The Order does not carve out exceptions for State Farm's obligation to respond to inquiries from the Insurance Commissioner or law enforcement or courts of jurisdiction issuing valid judicial process, and as a result, for a second time, the Court has entered an order, which requires State Farm to take action that ignores the obligations it holds towards the Insurance Commissioner and others.

It is this Order that has caused the West Virginia Insurance Federation and its member insurance companies great concern. For this reason, it files this brief as *amicus curiae*.

STATEMENT OF INTEREST

The West Virginia Insurance Federation ("the Federation") is the state trade association for property and casualty insurance companies doing business in West Virginia. Its members insure approximately eight of every ten automobiles and homes in West Virginia. The Federation is widely-regarded as the voice of West Virginia's insurance industry and has served the property and casualty insurance industry for nearly thirty years. The Federation has a strong interest in promoting a healthy and competitive insurance market in this State to ensure that insurance is both available and affordable to West Virginia's insurance consumers.

The Federation files this brief in support of the Petition filed by State Farm Mutual Automobile Insurance Company to underscore the far-reaching adverse effect that the Circuit Court's protective order will have on the insurance industry and insurance consumers in West Virginia. The Circuit Court's decision places all insurers in the untenable position of opting to violate its Order or comply therewith yet violate established state regulations and the position of the West Virginia Insurance Commissioner. Additionally, standard industry practices designed to curb fraud demand prohibition.

Not only State Farm here, but every insurance company doing business in West Virginia will be affected by this ruling. Indeed, this is an issue of such significance that the insurance community respectfully urges this Court's consideration and prohibition of the Circuit Court's Order.

ARGUMENT

Because the Protective Order entered by the Circuit Court would prevent insurance companies from properly detecting and preventing fraud, this Court should accept review and reverse it. The extent to which multiple parties play a role in the prevention of insurance fraud by

examining patterns across individual claims has been well-stated throughout this case. The Legislature has recognized, though, that "the business of insurance involves many transactions of numerous types that have potential for fraud and other illegal activities." W. VA. CODE § 33-41-1 (2010). And it is for that reason that the Legislature permitted use of "the expertise of the commissioner to investigate and help prosecute insurance fraud and other crimes related to the business of insurance more effectively, and to assist and receive assistance from state, local and federal law-enforcement and regulatory agencies in enforcing laws prohibiting crimes relating to the business of insurance." *Id.* Each party--the insurance companies themselves, the Insurance Commissioner and its Fraud Unit, law enforcement, and the public--has a role to play in the prevention of fraud.

The Circuit Court's Order ignores these requirements, and again forces insurance companies to adhere to the terms of the Order or the statutes and regulations, which violates West Virginia law and public policy interests. First, the Order again is in direct conflict with insurance companies' responsibilities under West Virginia law, because it prohibits sharing information which is contrary to their statutory obligations. Second, West Virginia law already protects the information that is shared by insurance companies, and therefore, there was no need for that portion of the Order. Finally, it is clear that this is an issue that extends beyond one insurer and one claimant, and therefore, this Court should accept review of the Order and reverse it.

A. The Circuit Court's Order Contradicts the Requirements Placed Upon Insurers by West Virginia Law.

By requiring that State Farm may not share "any confidential, non-public medical information" with any third party without the Plaintiff's consent, the Order contradicts the requirements of West Virginia law. To prevent and detect insurance fraud, the Legislature has

established within the Office of the Insurance Commissioner, the West Virginia Insurance Fraud Unit. W. VA. CODE § 33-41-8 (2010). Among other things, the Fraud Unit may investigate insurance fraud, inspect and copy insurer's records, and serve subpoenas to obtain information in an investigation or criminal matter. *Id.* To facilitate cooperation with the Insurance Commissioner, the Legislature has also stated that a person "having knowledge or a reasonable belief that fraud or another crime related to the business of insurance is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner." W. VA. CODE § 33-41-5 (2010). There is no requirement in the statutes that the Commissioner or an insurer seek any party's consent before information is requested or provided.

In the regulations promulgated by the Insurance Commissioner, the Commissioner has sought to protect the information that is provided to the Insurance Commissioner and fraud prevention agencies, but it also has reiterated that an authorization is not required before an insurer provides information requested by the Commissioner or others, nor is there a requirement to first seek an authorization before an insurer can affirmatively report suspected or actual fraudulent activity. Title 114, Series 57 of the Code of State Rules addresses the privacy of consumer financial and health information. In Section 15, the Rule states that an authorization is required before insurers disclose any non-public health information, except in certain circumstances. W. VA. CODE R. § 114-57-15 (2010). Those exceptions include disclosure for the purposes of "detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity." *Id.* at 15.2. That is, whenever an insurer detects or is investigating fraud or is reporting fraud, it need not request an authorization from the person of interest.

Indeed, that Rule describes a number of situations other than fraud investigation or prevention in which the insurer need not request or present an authorization before responding to the

Insurance Commissioner. Those circumstances include, among others: claims administration and adjustment, ratemaking and guaranty fund functions, peer review activities, performance evaluations, grievance procedures, administration of consumer disputes and inquiries, auditing, and reporting. W. VA. CODE R. § 114-57-15.2 (2010). In short, the Insurance Commissioner holds the authority to conduct investigations whenever she has cause to believe a provision of the Code has been violated. W. VA. CODE § 33-2-3a (2010). In pursuit of those investigations, the Insurance Commissioner may subpoena witnesses, take depositions, and "require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which the commissioner considers relevant or material to the inquiry." W. VA. CODE § 33-2-4 (2010).

By requiring an authorization, therefore, the Protective Order is in direct conflict with the statutes and regulations governing the Insurance Commissioner's authority and effectively thwarts the public policy behind the ability to report actual or suspected fraud. Those statutes and regulations do not require a claimant to seek the consumer's authorization before information is sought, and they plainly do not allow for an objection by the insurer because one has not been requested or received. By statute, insurers must comply with requests made of them by the Insurance Commissioner, other law enforcement agencies, and courts of competent jurisdiction with subpoena power.

The reason for this should be clear, especially in the context of fraud investigations. In many situations, the fraud activity that the Fraud Unit is trying to detect is fraud perpetrated by the person submitting the claim to the insurer. Of course that individual will not consent to the disclosure of information to the Fraud Unit because it might lead to his or her arrest and conviction. Thus, the statutes and regulations strike a necessary balance: the information is to be provided to the Insurance Commissioner, law enforcement, other anti-fraud agencies, or other courts of competent

jurisdiction without the consumer's consent and may be shared by the Insurance Commissioner and other anti-fraud agencies in certain circumstances when so warranted. *See* Part B. below. By holding that State Farm could only disclose information with the consent of the consumer, the Circuit Court has again imposed a requirement upon State Farm that requires State Farm to ignore its obligations to the Insurance Commissioner and other anti-fraud agencies as well as Courts. For that reason, it should be reversed.

B. The Information Disclosed is Protected From Further Disclosure by the Insurance Commissioner, and Therefore, the Protection the Circuit Court Sought to Impose Already Exists.

Even though the Federation believes that the Circuit Court's Protective Order improperly requires State Farm to ignore its obligations to the Insurance Commissioner, consumers in Mrs. Blank's position are not left without protection. To protect the privacy of the information disclosed to the Commissioner, the Legislature has protected that information from further disclosure. The Legislature has provided that information disclosed to the Fraud Unit "shall be confidential by law and privileged, shall not be subject to the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code, shall not be open to public inspection, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action." W. VA. CODE § 33-41-7 (2010). In addition, "[n]either the commissioner nor any person who receives documents, materials or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a) of this section except as ordered by a court of competent jurisdiction." *Id.*

In other words, when health information is disclosed to the Insurance Commissioner pursuant to its duty to investigate, detect, and prevent insurance fraud, that information is protected

from further disclosure. The reason, then, that the Circuit Court entered its Protective Order is fulfilled by the very statutes by which disclosure is made in the first place. However, they must be permitted to respond to the Insurance Commissioner's requests and other legitimate requests. When they do, insurers and claimants can be assured that the information they disclose is not shared further (with the exception of the Insurance Commissioner's ability to share that information to further its anti-fraud efforts). There simply is no need to prevent the insurers' disclosure in the first place, if those disclosures are made, the disclosed information is protected, and it is not disclosed further, except in limited circumstances.

As a result, the Circuit Court's Order reaches too far, and this Court should accept review to clarify insurers' obligations to respond to requests made by the Insurance Commissioner.

C. The Protective Order Will Reach Consumers Beyond Mrs. Blank, and Therefore, This Court Should Accept Review.

Finally, it must be made clear that the Court's Protective Order has bearing beyond the parties involved in this case. The Federation is aware that insurance companies other than State Farm have been met with demands to enter into similar confidentiality agreements and protective orders. Indeed, it was this practice that caused the Insurance Commissioner to issue Informational Letter 172 in September 2009, which addressed insurers' obligations with regard to record-keeping, and also discussed the importance of claim information as "necessary to protect the citizens of West Virginia from insurance fraud." W. Va. Ins. Comm. Informational Letter No. 172 (Sept. 2009).

More importantly, however, the Federation's members currently are involved in other cases--pending in *Harrison County*--in which either the original Protective Order--which this Court has now rejected--or an Order with provisions similarly onerous to those now under consideration

have been presented to its insurance company members as support for seeking confidentiality agreements or protective orders.

Thus, where the Circuit Court states that fraud is not a consideration "due to [Mr. Blank's] untimely passing from this Earth," it has incorrectly assumed that its Order would only apply in the case before it¹. The Order has already been shared in other cases, however, and there is no reason to suspect that it will not again. As such, these types of Orders will become the "standard" rather than the exception, which this Court previously held *is* the standard. Additional medical protective orders are only to be entered in extraordinary circumstances, specifically when a claimant can demonstrate an insurer's prior violation of the State Privacy Rule or an intent to improperly disseminate the claimant's medical information in the future. *Bedell*, supra. Accordingly, the fact that the Order places improper burdens on State Farm to ignore its obligations to the Insurance Commissioner is an important problem, which should be corrected now, before it is repeated in other cases, thereby negating any anti-fraud initiatives in West Virginia and extending its reach to the entire insurance industry.

CONCLUSION

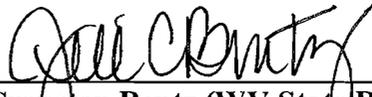
Both the West Virginia Insurance Federation and its member insurers are concerned that the piecemeal approach to protecting medical records that is fostered by protective orders of the type entered by the Circuit Court are detrimental to insurers doing business in West Virginia. When insurers can be fined, penalized, or even suspended for taking actions that they are ordered to take the terms of the October 25, 2010 Order, they inevitably will be forced to evaluate whether to risk these penalties by continuing to do business here. The Federation files this brief to support the

¹ It also incorrectly assumes that efforts to curtail fraud are directed only at claimants, but this is not true. In fact, medical records can reveal a pattern of practice by providers designed to receive fraudulent reimbursement. Further, even in this case, that statement is incorrect because the records at issue here are Carla Blank's records, not Mr. Blank's.

Insurance Commissioner's and the insurance industry's efforts to combat fraud and uniformly review the State's insurers' claims handling procedures and apply the Insurance Commissioner's Rules. It believes that cannot be done if individual plaintiffs or Circuit Courts are permitted to dictate to insurers separate case-by-case standards, many of which are in violation of state and federal privacy laws which insurers must heed. As a result, the Federation respectfully requests that the Court consider the case for review and grant a Writ of Prohibition precluding the Circuit Court from enforcing the Protective Order at issue.

WEST VIRGINIA INSURANCE FEDERATION

BY DINSMORE & SHOHL, LLP



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IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CARLA JAYNE BLANK, individually, and
in her capacity as the Personal Representative
of the Estate of Lynn Robert Blank,

Plaintiff,

VS.

CIVIL ACTION NO. 09-C-87-2
(Thomas A. Bedell, Circuit Judge)

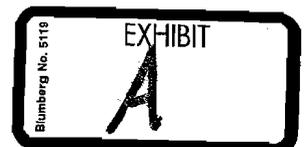
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation,
LANA S. EDDY LUBY, as the Personal
Representative of the Estate of Jeremy Jay Thomas,

Defendants.

**ORDER ENTERING PROTECTIVE ORDER, DIRECTING DISCLOSURE OF
RELEVANT MEDICAL RECORDS, AND SETTING TRIAL DATE**

Presently before the Court in this matter is the Parties' continued dispute over the disclosure of the Plaintiffs' medical records to the Defendants. This matter has recently returned to the jurisdiction of this Court after a stint with the West Virginia Supreme Court of Appeals on this issue. State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell, 697 S.E.2d 730 (2010). The Court has considered the guidance provided by the aforementioned opinion, and additionally has considered the following briefs which have been submitted by the Parties.

On or about September 24, 2010, the Plaintiffs submitted their "Amended Pre-Trial Memorandum," which included an attached proposed protective order. State Farm submitted its "Pre-Trial Memorandum" which also included a proposed "Protective Order" on or about September 3, 2010. State Farm additionally submitted the "Objection to Plaintiff's Proffered Medical Confidentiality Order," on September 24, 2010. The Plaintiffs



submitted a proposed "Temporary Protective Order Granting Plaintiff Protection for Her Confidential Medical Records and Medical Information," on or about September 28, 2010.

Finally, the Court held a hearing on September 29, 2010, and set this matter for trial. Accordingly, the Court reminds the Parties that this matter is set for trial during the week of **December 13, 2010**. Additionally, the oral arguments on the declaratory judgment action, as well as the final pre-trial conference, are set for **December 2, 2010, at 10:00AM**.

After considering the opinion of the Supreme Court, the Parties' briefs and proposed orders, and the pertinent law, the Court makes the following rulings; first, the Plaintiffs must disclose their relevant medical records, second, the Plaintiffs have demonstrated good cause for the issuance of a reasonable protective order as to the confidentiality of said records, and third, said disclosure shall be in accordance with the protective order outlined within this Order and the Defendants shall be bound by the protective order until the records are offered into the public domain at trial, or the Plaintiffs otherwise give their permission for dissolution of the protective order.

IT IS SO ORDERED.

First, the Court notes that the Defendants have raised the issue of whether the Plaintiffs are entitled to a protective order in regards to their medical records. Contrary to the Defendants' argument, the Supreme Court did not rule that a general protective order was inappropriate in this case, but merely that the Plaintiffs were not entitled to a protective order which conflicted with the record retention rules of the Insurance Commissioner or which prohibited the retention of electronic records.

A court may not issue a protective order directing an insurance company to return or destroy a claimant's medical records prior to the time period set forth by the Insurance Commissioner of West Virginia in §§ 114-15-4.2(b) and 114-15-4.4(a) of the West Virginia Code of State Rules for the retention of such records.

Syl. Pt. 7, State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell, 697 S.E.2d 730 (2010).

And further,

The circuit court, therefore, clearly erred in issuing a protective order prohibiting the electronic storage of Mrs. Blank's medical records, as Mrs. Blank did not show good cause for such order pursuant to Rule 26(c) of the West Virginia Rules of Civil Procedure. Accordingly, the Court grants the writ of prohibition sought by State Farm to prevent the enforcement of the protective order on this ground as well.

Id. at 740. The prior protective order entered by this Court had two (2) invalid terms; the duration of record retention by the Defendants and the availability of electronic record retention. However, the Supreme Court did not hold that there were no grounds for a protective order of any sort.

Accordingly, after considering Rule 26 of the West Virginia Rules of Civil Procedure, the Court holds that the Plaintiffs have demonstrated a "particular and specific demonstration of fact," as well as good cause, for the issuance of an appropriate protective order. Specifically, the Court notes that medical records are private in nature and are protected by privilege between the treating physician or care provider and the patient. Further, medical records have the potential to contain facts that are embarrassing to the patient, and the law recognizes that the dissemination of medical records must be done with the patient's consent. Further, the Supreme Court recognized the same, "here, none of Mrs. Blank's medical records will become public unless she consents to their dissemination or until they are introduced at trial." Id. at 739-740. Finally, the Defendants, both in oral argument before the Supreme Court and in their proposed "Protective Order," have stated that the Plaintiffs are entitled to a reasonable protective order. It is the terms of the Order that the Defendants have issue with, not the valid justification for a general protective order.

Therefore, the Plaintiffs have demonstrated a "particular and specific demonstration of fact," as well as good cause, for the issuance of an appropriate protective order. W. Va. R.C. Pro., R. 26.

First, the Court hereby **ORDERS** that the Plaintiffs disclose their relevant medical records, as follows.

The Plaintiffs shall disclose all relevant medical records for a period of ten (10) years prior to the accident, which took place on March 20, 2008, as well as all relevant medical records during the time that has passed since the accident. Any medical records in possession of the Plaintiffs which they claim are either not relevant or non-discoverable for any other reason shall be documented in an appropriate privilege log which shall be submitted to the Defendants and shall identify the date of treatment, the general type of treatment, and the medical provider. The disclosure of said records and any necessary privilege log shall take place within fourteen (14) calendar days, including weekends and holidays, of the date of entry of this Order.

State Farm, and all of its agents, servants, and employees, as well as defense counsel and its agents, servants, and employees, shall be bound by the following protective terms as to the handling and dissemination of the Plaintiffs' medical records.

Therefore, the following terms of confidentiality shall apply to Carla Blank, (Plaintiff) and Lynn Blank's (Decedent) medical records.¹

1. Defendants' counsel will not disclose orally or in summary form, any of the Plaintiffs or Decedent's medical records, or medical information,

¹The Plaintiffs' counsel has the burden of determining which medical records are relevant to the accident, including any potentially relevant pre-existing conditions, and disclosing the same under the good faith principles of the rules of discovery.

to any person other than their clients, office staff, and experts necessary to assist in this case, including necessary servants, agents, and employees of their clients, and any such person shall be advised of this Protective Order and receive and review a copy of it and be informed that they are bound by the non-disclosure terms and the other provisions of this Protective Order if they receive any protected information. If any such protected documents or information need to be part of any pleading, they shall be filed with such pleading under seal pursuant to this Order and also be furnished to this Court with each document marked "confidential."

Provided, however, Defendants' counsel may disclose, either orally, in writing, by paper copies, or electronically, such information to the Defendants' experts and insurance carrier, but any said expert or insurance carrier or any other person receiving said information, shall, pursuant to this Order, receive a copy of this Protective Order and agree in writing to be bound by all of the terms of this Protective Order, including the non-disclosure and non-retention of such material as set forth herein, and be subject to the jurisdiction of this Court for enforcement purposes; a copy of each such written agreement shall be provided to Plaintiffs' counsel upon execution by any person receiving such protected information and in the event any expert receiving such medical information is an undisclosed, non-testifying expert, then in that event, the attorney who provided such information to the undisclosed non-testifying expert shall maintain in his or her office files, the executed written agreement even after the return or destruction of the protected information to Plaintiff's counsel and the final dismissal of this case.

2. Also, upon conclusion of the appropriate period established by W. Va. C.S.R. § 114-15-4.2(b), all medical records, and medical information, or any copies or summaries thereof, will either be destroyed with a certificate from Defendants' counsel as an officer of the Court that the same has been done, or all such material will be returned to Plaintiff's counsel without

retention by Defendants' counsel or any other person who was furnished such materials and information pursuant to the terms of this Protective Order. Specifically, the records shall be kept no longer than the provisions of § 114-15-4.2(b) require, with the time period beginning to run at the conclusion of this case, including any possible appellate litigation. The time period shall be the lesser of "the current calendar year plus five (5) calendar years," or "from the closing date of the period of review for the most recent examination by the commissioner," or "a period otherwise specified by statute as the examination cycle for the Insurer." § 114-15-4.2(b).² Provided however should Defendants' counsel desire to retain a copy of the protested medical records produced in this case, the same shall be permitted as long as those protected medical records are maintained in a sealed manner in Defense Counsel's file and not used for any other purpose whatsoever except upon further order of this Court or in response to lawful process after notice to the protected person, or in response to a lawful order of another Court with jurisdiction, or upon written consent of the protected person whose medical records and information is protected herein.

3. Also, any medical records previously received by or on behalf of any party in this case or any other person including an employee of any insurance carrier, even if received prior to the Court's ruling on this Protective Order, are protected regarding the confidentiality and privacy of such records in accordance with the Court's ruling herein.

2

W. Va. C.S.R. § 114-15-4.2(b) states as follows:

All insurer records within the scope of this rule must be retained for the lesser of:

1. The current calendar year plus five (5) calendar years;
2. From the closing date of the period of review for the most recent examination by the commissioner; or
3. A period otherwise specified by statute as the examination cycle for the insurer.

W. Va. C.S.R. § 114-15-4.2(b).

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IT IS SO ORDERED.

The Defendants' argument that case-specific record retention policies are cumbersome is without merit. The purpose of the protective order is to allow the protected disclosure of private, personal, medical records, and the period of retention does not have to be the most convenient for State Farm, but instead, must protect the privacy of the Plaintiff, a former policy holder with State Farm.

Additionally, the Defendants' request that they be allowed to disseminate the Plaintiffs' private, confidential records to third party organizations such as the National Insurance Crime Bureau ("NICB") is **DENIED**. As stated by the Supreme Court:

While the NICB, in its amicus curiae brief, and State Farm both admit that certain claim information is shared between them, State Farm contends that it complies with West Virginia's laws protecting confidential medical information and, thus, does not provide any nonpublic medical information to the NICB without the patient's consent.

FN5, State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell, 697 S.E.2d 730, 739 (2010).

Accordingly, this Order hereby **PROHIBITS** the Defendants from sharing any confidential, non-public medical information to the NICB, or any third party in general, without the Plaintiffs' consent. The Defendants can be assured that Lynn Blank, their former policy holder, will not be defrauding any insurance companies in the future due to his untimely passing from this Earth.

Further, the Defendants are reminded of the following:

Thus, insurers operating in West Virginia are required to prevent the unauthorized disclosure of confidential medical records contained in claim files, whether those files are stored electronically or in paper format.

State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell, 697 S.E.2d 730, 738 (2010).

IT IS SO ORDERED.

It is hereby directed that a photocopy of this Order be delivered, by first class mail or other means, to the following:

David J. Romano
Rachel Romano
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Clarksburg, West Virginia 26301

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Morgantown, West Virginia 26508.

E. Kay Fuller, Esq.
Martin & Seibert, L.C.
P.O. Box 1286
Martinsburg, WV 25402

ENTER: October 25 2010


THOMAS A. BEDELL, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **Brief of the West Virginia Insurance Federation as *Amicus Curiae* in Support of State Farm Mutual Automobile Insurance Company's Petition for *Writ of Prohibition*** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

The Honorable Thomas A. Bedell
Circuit Court of Harrison County
Harrison County Courthouse
301 West Main Street
Clarksburg, WV 26301-2967

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Prosecuting Attorney
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This 5th day of November, 2010.



Jill C. Bentz
Attorney for *Amicus Curiae*
West Virginia Insurance Federation