



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
IN RE: RALEIGH HEART CLINIC LITIGATION, CIVIL ACTION NO. 18-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

AGREED MEDICAL RECORDS PRODUCTION PROTOCOL

In accordance with Rule 29 of the West Virginia Rules of Civil Procedure, the undersigned parties, by and through their counsel, hereby stipulate and agree to the following terms and conditions governing production of medical records (hereinafter, the "Protocol") in the above-referenced mass litigation. Based on the foregoing, **IT IS HEREBY ORDERED:**

Definitions

Plaintiff's Individual Counsel means the law firm and attorney assigned to each individual plaintiff's case (The Segal Law Firm, Berthold Law Firm, Preston and Salango, and The Law Offices of Stephen P. New).

Defendant's Counsel means an attorney or law firm who used the authorization to request medical records on behalf of their client (defendant).

Support Staff Member means a secretary, paralegal, administrative assistant, receptionist, legal assistant, etc. Associate attorneys are specifically excluded from the definition of Support Staff Member.

Agent of the Defendant's Counsel means a third-party vendor, including medical records collection, e-discovery, or database vendors, providing services to the Defendant's Counsel at Defendant's Counsel's request.

Protocol

All Plaintiffs will produce mutually agreed-upon HIPAA authorizations to all Defendants who request the same. Furthermore, each Plaintiff's Individual Counsel will produce, through the Information Sheets for each individual Plaintiff, all known names of healthcare professionals and/or entities who have provided care and/or treatment to each individual Plaintiff within the past fifteen (15) years. Defendant(s) may request all records from these identified medical providers and any other healthcare providers identified in medical records or Plaintiffs' discovery responses and productions using the aforementioned authorizations. Once Defendant(s) receive any medical record(s), support staff members or agents of the Defendant's Counsel will Bates-stamp the record(s), mark "CONFIDENTIAL," and forward to each Plaintiff's Individual Counsel's office, via e-mail or U.S. Mail in secured electronic format weekly. At no time may any person(s) other than Support Staff Members and agents of the Defendant's Counsel review the records prior to receiving written consent of the respective Individual Plaintiff's Counsel, as detailed below. Further, Support Staff Members or agents of the Defendant's Counsel's review of the record(s) shall be solely for the purpose of processing records for databases, Bates-stamping the record(s), marking the records "CONFIDENTIAL," and preparing the records for production to the Plaintiffs' Counsel.

Plaintiff's Individual Counsel shall have ten (10) business days from the date of the electronic (e-mail) transfer of the records or fifteen (15) business days from the date of mailed transfer of the records to identify any documents by Bates-stamped record(s) which Plaintiff's Individual Counsel has a good faith belief contains information that is highly sensitive, non-relevant and/or non-discoverable and inform Defendant's Counsel. Upon request of Defendant's Counsel, Plaintiff's Individual Counsel will subsequently submit those identified record(s) to the

MLP, along with a Protective Order, for review *in camera* before Defendant's Counsel are permitted to review the flagged record(s). Nothing contained herein shall prohibit Defendant's Counsel from reviewing any other non-flagged materials contained in the record(s). Further, Plaintiff's Individual Counsel will inform the Defendant's Counsel within ten (10) business days from the date of electronic transfer (e-mail) of the records or fifteen (15) business days from the date of mailed transfer of the records of their intent to invoke the protection of the above outlined procedure, or they waive their right to do so.

All costs for medical records collection will be shared evenly between the Defendants in the cases. For all cases naming Raleigh Heart Clinic, Inc., Dr. Barghouthi, and Cardinal Health 414, LLC costs shall be shared one-half by Raleigh Heart Clinic, Inc. and Dr. Barghouthi and one-half by Cardinal Health 414, LLC. If a party is dismissed from a civil action or reaches a settlement of the claims, the dismissed or settled party shall not share in the costs of medical records collection for any records requested after the date of settlement or dismissal, and the remaining parties shall continue to share costs proportionally based upon the number of parties remaining in the civil action.

If any of Plaintiffs' Individual Counsel intends to collect any Plaintiff's medical records for production to the Defendants, the following procedure will apply:

- A. Plaintiffs' Individual Counsel must advise Defendant's Counsel in writing of their intention to produce that Plaintiff's records in lieu of providing authorizations to Defendant's Counsel as described in this Protocol;
- B. Within 14 days of providing written notification as provided in subsection (A) above, Plaintiffs' Individual Counsel shall provide to Defendant's Counsel;

1. Copies of the Plaintiff's medical records, Bates-stamped in such a way as to identify the Plaintiff and each enumerated page of the records; and
 2. Names of all healthcare professionals and/or entities that have provided care and/or treatment to that Plaintiff within the last 15 years.
- C. For each Plaintiff whose records are produced to Defendants by Plaintiffs' Individual Counsel, Plaintiffs' Individual Counsel will provide Defendants' Counsel a signed certification, pursuant to Rule 11 of the Rules of Civil Procedure, that verifies:
1. That no records of the Plaintiff have been withheld from production, except as described below in subsection (2);
 2. That to the extent that any records of the Plaintiff have been withheld from production, an appropriate privilege log is attached which identifies the Bates numbers of the records withheld, along with a description of the document withheld, and an explanation of the reason the record is being withheld; and
 3. That the Plaintiff's entire file was requested from each of that Plaintiff's healthcare providers identified pursuant to subsection (B)(2) above.

Inadvertent failure to comply with the technical aspects or timelines of this Protocol shall not be grounds to seek cost-shifting unless the party seeking cost-shifting can show that the violative party acted in bad faith in the failure to comply with the technical aspects or timelines of this Protocol.

It is so ORDERED.

ENTER: December 3, 2018

/s/ Jay M. Hoke
Lead Presiding Judge
Raleigh Heart Clinic Litigation

Jointly Submitted by:

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