



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

**PROTECTIVE ORDER**

Upon agreement of the Plaintiffs, and the Defendants, Raleigh Heart Clinic, Inc., Thair Barghouthi, M.D., Cardinal Health 414, LLC, and the West Virginia Department of Health and Human Resources, by their respective counsel, it is hereby **ORDERED** that certain documentation submitted by the parties in response to discovery requests served in this matter are deemed to be confidential and/or proprietary in nature and/or may contain trade secrets and shall be subject to the instant Protective Order.

1. Any such documentation or other information, or any copy, excerpt, or summary thereof, or the information contained therein, which a party or a non-party who receives a subpoena in this matter seeking documents or tangible things, asserts in good faith contains confidential information and/or proprietary information and/or trade secrets, or is entitled to other legally recognizable confidential treatment and subject to protection under Rule 26 of the West Virginia Rules of Civil Procedure and common law is to be marked "Confidential" in a conspicuous location.

2. Any documentation marked "Confidential" or the contents thereof shall be used only for the purposes of this civil litigation and shall only be disclosed to (a) the parties, (b) outside and in-house counsel for each party, (c) party witnesses at depositions, and (d) any experts or consultants retained by the parties in connection with this litigation. Any of these individuals receiving any documentation marked "Confidential" or the contents thereof shall be made aware of this Protective Order and

agree to be bound by it. Persons other than the parties and their counsel of record may only be given access to receive documentation marked "Confidential," or the contents thereof, pursuant to this section after counsel have provided a copy of this Protective Order and caused each such person to execute a Certification in the form attached as Exhibit A hereto (each, a "Certification"). Counsel disclosing documentation marked "Confidential" or the contents thereof shall be responsible for holding executed Certifications. One representative with authority to bind a firm or other entity may sign Exhibit A on behalf of his or her respective firm or other entity.

3. Any documentation marked "Confidential" or the contents thereof shall only be used for purposes of this case and shall not be disseminated or disclosed to any person other than those described herein, with the exception of the parties' insurers, who may utilize the records in accordance with its reinsurance needs and as required by the West Virginia Insurance Commissioner, the West Virginia Board of Medicine, the West Virginia Board of Osteopathy, and West Virginia Code § 33-6F-1 (2017).

4. Any document produced by a party and marked "Confidential" or the contents thereof may be marked as exhibits in depositions, but such depositions will not be filed with the Clerk and will remain subject to this Protective Order unless and until such documents are admitted into evidence at the trial of this case and pursuant to paragraph 5 of this Protective Order. If any such documents are used in any Court proceeding or attached to any motion, they shall not be filed with the Clerk as public documents, but shall only be served upon counsel and supplied to the Court under seal.

5. In the post-discovery phase of this matter, if any party or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any "CONFIDENTIAL"

document or material, s/he must provide reasonable notice to the party or non-party that produced the document or material. The parties, non-parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the "CONFIDENTIAL" marking, or (b) creating a mutually acceptable redacted version that suffices for purposes of the case. If an amicable resolution proves unsuccessful, the parties, non-parties and/or attorneys may present the issue to the court for resolution.

6. If, at any time, an opposing party believes that any documents marked "Confidential" by the disclosing party have been inappropriately claimed as containing confidential information, or proprietary information, or trade secrets or otherwise marked as "Confidential" not in good faith, then the party opposing such claim shall notify, in writing, the disclosing party's counsel of its disagreement with regard to any such document. Any party seeking to oppose a designation of confidentiality must provide such written notice in compliance with any deadline set by the Court for such objections, and in no event later than the last day for discovery set by the operative scheduling order entered by the Court in this litigation. If the parties cannot reach a resolution of their dispute, nothing herein shall be construed to prohibit the party receiving such documents from seeking adequate relief from the Court. Such documentation shall remain protected under this Protective Order until the Court has ruled on such issue. Should the dispute regarding the claim of confidential information involve documents or tangible things designated as confidential and provided by a non-party, the parties must provide reasonable notice and opportunity to be heard to the non-party that produced the document or material.

7. This Protective Order is not intended to restrict any party, in any way, from asserting any objection to a discovery request based upon an assertion that a document is confidential, proprietary in nature, contains trade secrets, is privileged or based upon any other grounds.

8. All parties to this action are hereby bound by the terms of this Protective Order with respect to all documents or tangible items marked “Confidential” or the contents thereof.

9. Within 30 days of the final resolution of this case, all documents containing information protected by this Protective Order, including all copies thereof, shall be returned to the disclosing party’s counsel or destroyed with a letter certifying the destruction from counsel receiving such documents in discovery. This section does not apply to the parties’ insurers, as they are required to keep records pursuant to the regulations set forth by the West Virginia Insurance Commissioner.

10. Should any party or their counsel desire to retain a copy of any document marked “Confidential” after final resolution of this case, the same shall be permitted only if said document(s) are maintained in a sealed file or in a secured electronic form and not used for any other purpose whatsoever except upon further order of this Court, in response to lawful process, in response to a lawful order of another Court with jurisdiction, or where production is required by statute, rule, court order, regulation, requirements of the West Virginia Insurance Commissioner, or requirements of the West Virginia Board of Medicine, West Virginia Board of Osteopathy, or similar entity in another state.

11. By agreement of the parties, this Protective Order specifically applies to all previously disclosed documents that were marked "Confidential" pursuant to another Protective Order and to all Plaintiffs' medical records previously produced (formally or informally) by Plaintiffs or obtained by a Defendant pursuant to an authorization.

It is so **ORDERED**.

**ENTER:** July 13, 2018

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

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**CERTIFICATION**

I hereby attest to my understanding that confidential documents, materials or information are being provided to me pursuant to the terms and conditions of the stipulated Protective Order entered by the Court in the above-captioned litigation. I hereby attest that I have been given a copy of and have read the Protective Order and that I hereby agree to be bound by it and its terms. I further understand that documents designated as Confidential in this litigation, and any notes, memoranda, or other forms of information derived from it, may not be used, copied, or disclosed by me to anyone else except in strict accordance with the Protective Order and then only for use as provided in the Order. I hereby acknowledge and agree that each disclosing party may hold the undersigned personally liable for any unauthorized use or unauthorized disclosure by the undersigned of the disclosing party's documents, materials, or other information designated as Confidential and disclosed to the undersigned.

Dated:

\_\_\_\_\_  
Name:  
Title: