

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

CIVIL ACTION NO. 20-C-196

Presiding : Judge Akers

Resolution: Judge Carl

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

**AGREED HIPAA QUALIFIED PROTECTIVE ORDER**

By signing this Protective Order, Plaintiff, Doctors Specialty Care, LLC, by counsel, and Defendant, The Health Plan of West Virginia, Inc., by counsel, have agreed to be bound by its terms and to request its entry by the presiding judge. It is hereby **ORDERED** as follows:

1. In accordance with the requirements of the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), the Court hereby enters a HIPAA Qualified Protective Order, as that term is defined in the foregoing regulations. In addition to the foregoing federal laws and regulations, this Order is entered to ensure compliance with applicable state laws and regulations governing patient privacy and protecting healthcare information.

2. For purposes of this Order, the term Protected Health Information (PHI) 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

7-25-2020  
W. Arceneaux  
S. Kinney  
G. Schillace  
J. Henry

an individual, (b) the provision of health care to an individual, or (c) the payment for the provision of health care to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

3. Pursuant to 45 C.F.R. § 164.512(e)(1)(v)(A), the parties shall not use or disclose PHI for any purpose other than this litigation. However, for purposes of the litigation, the parties may disclose PHI to the presiding judge and the judge's support staff, the parties, their attorneys of record, the attorneys' firms (*i.e.*, attorneys, support staff and consultants), the parties' insurers, experts, consultants, court reporters, videographers, and copy services.

4. If a party wishes to file PHI with the Court, it must be filed under seal, following the appropriate procedures to do so. However, any party may file a pleading or document with the Court that describes, summarizes, quotes, or contains PHI, as long as that party redacts the name of the person to whom the PHI pertains, and files an unredacted version under seal. Any party may use documents containing PHI at trial or an evidentiary hearing, including but not limited to introducing them into evidence and asking a witness about their contents. If a party moves a document containing PHI into evidence and wants it to be a part of the record, the Court shall appropriately instruct the Clerk on how to handle such documents.

5. Prior to disclosing PHI to persons involved in this action, the parties and their attorneys shall take reasonable steps to ensure that such persons do not use or disclose the PHI for any purpose other than this litigation. This shall include, but not be limited to, informing each such person that the PHI may not be used or disclosed for any purpose other than this litigation and obtaining their signature on the Acknowledgment that is attached hereto.

6. Pursuant to 45 C.F.R. § 164.512(e)(1)(v)(B), within 60 days from the conclusion of these proceedings, any recipient of PHI under this Order shall either return

the PHI to the covered entity that provided it or destroy the PHI (including all copies made). If destroyed, the recipient of PHI shall send a declaration to the party producing the PHI material that the documents have been destroyed in accordance with this Order. For purposes of this Order, the conclusion of these proceedings shall mean the point at which this litigation is fully concluded, including by final order by the Court ending the case, the conclusion of any appeals and proceedings on remand, or the expiration of time for any party to seek further appellate review.

7. This Order does not control or limit the use of PHI that was received by means other than through this Order (for example, through consent of the individual or through a public records request). However, the requirements of Paragraph 4 apply to all PHI, regardless of how it was obtained.


8. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed PHI to any person or in any circumstance not authorized under this Order, the Receiving Party must, not later than 30 calendar days after learning of the disclosure, (a) notify in writing the Disclosing Party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the PHI; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request that such person or persons execute the Acknowledgment that is attached hereto.

The Clerk is instructed to provide a copy of this Order to counsel of record and any unrepresented party.

ENTER: *July 21, 2020*

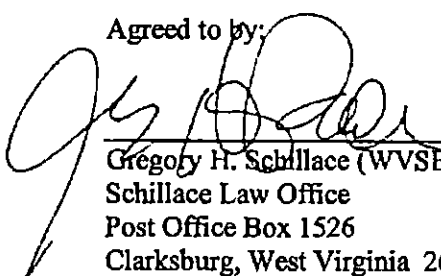
  
\_\_\_\_\_  
Judge Maryclaire Akers

Presented by:

  
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