

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

7-25-2022
W. Aronow
S. Kinney
G. Schillace
J. Leary

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 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:

I. DISCOVERY PHASE

A. If a party, or a non-party producing information in this civil action, or an attorney for the party or non-party, has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a request or court order, are proprietary and/or confidential and should not be disclosed other than in connection with this action and pursuant to this Protective Order, the party, non-party, or attorney shall clearly mark each such document or other material as “**CONFIDENTIAL**.” The individual or entity designating the document or materials as “**CONFIDENTIAL**” must take care to limit any such designation to specific documents or materials that qualify for protection under the appropriate standards. Mass, indiscriminate, or routine designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g. to

unnecessarily encumber or delay the case development process or impose unnecessary expense and burden on another party) expose the designating individual or entity to sanctions. If it comes to the attention of the designating individual or entity that a document or other material has been improperly marked as **"CONFIDENTIAL,"** the designating individual or entity must promptly notify all parties that the erroneous designation is being withdrawn and must replace the improperly designated document or material with a copy that is not marked **"CONFIDENTIAL."**

B. If a party or an attorney for a party disputes whether a document or other material should be marked **"CONFIDENTIAL,"** the parties and/or attorneys shall attempt to resolve the dispute with the designating individual or entity. If they are unsuccessful, the party or attorney challenging the **"CONFIDENTIAL"** designation shall do so by filing an appropriate motion.

C. No party or attorney or other person subject to this Protective Order shall distribute, transmit, or otherwise divulge any document or other material which is marked **"CONFIDENTIAL,"** or the contents thereof, except in accordance with this Protective Order. Court personnel are not subject to this Protective Order while engaged in the performance of their official duties.

D. Any document or other material which is marked **"CONFIDENTIAL,"** or the contents thereof, may be used by a party, or a party's attorney, expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Protective Order shall prevent the use of any document or other material which is marked **"CONFIDENTIAL,"** or the contents thereof, at any deposition taken in this action.

E. If a party or attorney wishes to disclose any document or other material which is marked **"CONFIDENTIAL,"** or the contents thereof, to any person actively engaged in working

on this action (e.g., expert witness, paralegal, associate, consultant), the person making the disclosure shall do the following:

1. Provide a copy of this Protective Order to the person to whom disclosure is made;
2. Inform the person to whom disclosure is made that s/he is bound by this Protective Order;
3. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;
4. Instruct the person to whom disclosure is made to return any document or other material which is marked "**CONFIDENTIAL**," at the conclusion of the case, including notes or memoranda made from "**CONFIDENTIAL**" material; and
5. Maintain a list of persons to whom disclosure was made and the "**CONFIDENTIAL**" materials which were disclosed to that person.

II. POST-DISCOVERY PHASE

A. If any party, non-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 that produced the document or material. The 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. *In particular in this matter potentially involving certain protected information such as patient names and other identifying information, it is anticipated that this information will be redacted and a redaction key be prepared and utilized.* If an amicable resolution proves unsuccessful, the parties and/or attorneys may present the issue to the court for resolution. The proponent of continued confidentiality will have the burden of persuasion that the document or material should be withheld from the public record.

B. Within thirty days after the conclusion of the action, each party shall gather the **“CONFIDENTIAL”** materials, copies thereof, and related notes and memoranda, including materials given by that party to any other individual, and shall return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order, unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of a receiving party or the party’s expert witness or consultant, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including drafts of preliminary reports submitted by an expert or consultant, which includes information produced as **“CONFIDENTIAL,”** so long as that work product does not duplicate verbatim substantial portions or the text or images of confidential documents. Any such work product retained by an attorney shall continue to be **“CONFIDENTIAL”** and shall be subject to this protective order. The attorney may use his or her work product in other litigation provided that the attorney does not use or disclose the confidential documents.

III. GENERAL PROVISIONS

A. A Party that has inadvertently produced **“CONFIDENTIAL”** information without so designating it may at any time re-designate such information as **“CONFIDENTIAL.”** The inadvertent or unintentional disclosure of **“CONFIDENTIAL”** information shall not be deemed a waiver, in whole or in part, of any Party’s claims of confidentiality. If a Party inadvertently or unintentionally produces **“CONFIDENTIAL”** information without designating it as such in accordance with the provisions of this Protective Order, that Party shall promptly upon discovery,

either: (a) demand the return of the “**CONFIDENTIAL**” information; or (b) furnish a properly marked substitute copy, along with written notice to all Parties that such document or information is deemed “**CONFIDENTIAL**” and should be treated as such in accordance with the provisions of this Protective Order. Each receiving Party must treat such document or information as “**CONFIDENTIAL**” from the date such notice is received, but each receiving Party shall have no liability for any disclosures of such information that were made prior to re-designation. Disclosure of “**CONFIDENTIAL**” information prior to the receipt of such notice, if known, shall be reported to the designating Party. If any party objects to this subsequent designation, the parties shall meet and confer in an attempt to resolve their dispute over this designation. If the parties have met and conferred and they are unable to resolve their dispute over the designation, the objecting party may file a motion with the Court to have the designation removed.

B. This Order shall remain in effect throughout the course of this litigation, during any appeals, and it shall survive the termination of this action and shall continue in full force and effect thereafter.

C. Nothing in this Protective Order or any action or agreement of a party under this Protective Order limits the Court’s power to make any Orders that may be appropriate with respect to the use and disclosure of any documents produced or used in discovery or at trial, including the ability to order removal of a “**CONFIDENTIAL**” designation.

D. This Order shall be subject to modification by the Court on its own motion or on motion of any party or any other person with standing concerning the subject matter.

E. This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties and their employees, officers, directors, and agents, testifying and non-testifying experts, and persons made subject to this Order by its terms. This Order shall apply to


all other documents in this litigation that were or could have been appropriately marked as "CONFIDENTIAL" information, that was produced by any party prior to the Protective Order being signed.

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

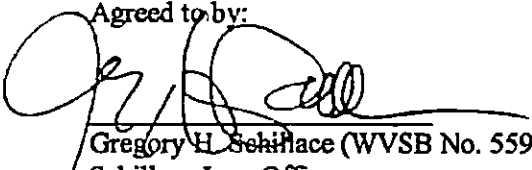
ENTER: July 21, 2000


Judge Maryclaire Akers

Presented by:


Webster J. Arceneaux, III (WVSB No. 155)
Sandy Henson Kinney (WVSB No. 6329)
LEWIS GLASSER PLLC
300 Summers Street, Suite 700
Post Office Box 1746
Charleston, West Virginia 25326
Telephone: (304) 345-2000
FAX: (304) 343-7999
E-mail: wjarceneaux@lewisglasser.com
skinney@lewisglasser.com
Counsel for The Health Plan of West Virginia, Inc.

Agreed to by:


Gregory H. Schillace (WVSB No. 5597)
Schillace Law Office
Post Office Box 1526
Clarksburg, West Virginia 26302-1526
Telephone: 304-624-1000
FAX: 304-624-9100
Email: ghs@schillacelaw.com
Counsel for Plaintiff