

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 21, 2018

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLAUDIA GREENWALD,

Plaintiff,

v.

YAKIMA VALLEY COUNCIL ON
ALCOHOLISM, doing business as
Triumph Treatment Services; JIM
BECKETT; and WALLY LEE,

Defendants.

NO: 1:18-CV-3048-RMP

ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE ORDER

BEFORE THE COURT is a motion for entry of a stipulated proposed protective order to govern discovery in this action, which is likely to involve production of confidential, proprietary, or private information appropriate for limited disclosure. ECF No. 8.

The parties acknowledge, and the Court agrees, that their stipulation is consistent with Federal Rule of Civil Procedure 26(c). ECF No. 8 at 2. The protective order language does not confer blanket protection on all disclosures or responses to discovery. The protection that the order affords from public disclosure

1 and use extends only to the limited information or items that are entitled to
2 confidential treatment under the law, and it does not presumptively entitle parties to
3 file confidential information under seal.

4 Having reviewed the protective order proposed by the parties, and having
5 heard from counsel at the scheduling conference in this matter on August 20, 2018,
6 the Court finds good cause to grant the motion and enter the stipulated protective
7 order.

8 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's unopposed motion,
9 **ECF No. 8**, for entry of the "[Proposed] Stipulated Protective Order" is
10 **GRANTED**. The protective order in effect is set forth below.

11 **PROTECTIVE ORDER**

12 1. **"CONFIDENTIAL" MATERIAL**

13 "Confidential" material shall include the following documents and tangible
14 things produced or otherwise exchanged:

- 15 (a) Medical records and healthcare information;
- 16 (b) Personnel records of current or former employees;
- 17 (c) Salary, bonus, commission, and all other compensation or payroll data;
- 18 (d) Defendants' Patients/Clients' information;
- 19 (e) Social Security numbers; and
- 20 (f) Tax returns, 990s, and other tax-related information.

1 2. SCOPE

2 The protections conferred by this agreement cover not only confidential material (as
3 defined above), but also (1) any information copied or extracted from confidential
4 material; (2) all copies, excerpts, summaries, or compilations of confidential
5 material; and (3) any testimony, conversations, or presentations by parties or their
6 counsel that might reveal confidential material. However, the protections conferred
7 by this agreement do not cover information that is in the public domain or becomes
8 part of the public domain through trial or otherwise.

9 ACCESS TO AND USE
OF CONFIDENTIAL MATERIAL

10 3.1 Basic Principles. A receiving party may use confidential material that
11 is disclosed or produced by another party or by a non-party in connection with this
12 case only for prosecuting, defending, or attempting to settle this litigation.

13 Confidential material may be disclosed only to the categories of persons and under
14 the conditions described in this agreement. Confidential material must be stored and
15 maintained by a receiving party at a location and in a secure manner that ensures that
16 access is limited to the persons authorized under this agreement.

17 3.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the designating party, a
19 receiving party may disclose any confidential material only to:

1 (a) the receiving party and their counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 (b) the officers, directors, and employees (including in house counsel) of
5 the receiving party to whom disclosure is reasonably necessary for this
6 litigation;

7 (c) experts and consultants to whom disclosure is reasonably necessary for
8 this litigation;

9 (d) the court, court personnel, and court reporters and their staff;

10 (e) copy or imaging services retained by counsel to assist in the duplication
11 of confidential material, provided that counsel for the party retaining the
12 copy or imaging service instructs the service not to disclose any
13 confidential material to third parties and to immediately return all originals
14 and copies of any confidential material;

15 (f) witnesses or potential witnesses in the action to whom disclosure is
16 reasonably necessary; and

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the
19 information.

20 3.3. Filing Confidential Material. Before filing confidential material or
21 discussing or referencing such material in court filings, the filing party shall confer

1 with the designating party to determine whether the designating party will remove
2 the confidential designation, whether the document can be redacted, or whether a
3 motion to seal or stipulation and proposed order is warranted. The parties shall
4 follow the applicable rules of civil procedures in filing such motions or stipulations.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1. Exercise of Restraint and Care in Designating Material for Protection.

7 Each party or non-party that designates information or items for protection under
8 this agreement must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The designating party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify, so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber or delay the case development process or to
17 impose unnecessary expenses and burdens on other parties) expose the designating
18 party to sanctions.

19 If it comes to a designating party's attention that information or items that it
20 designated for protection do not qualify for protection, the designating party must
21 promptly notify all other parties that it is withdrawing the mistaken designation.

1 4.2. Manner and Timing of Designations. Except as otherwise provided in
2 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, disclosure or discovery material that qualifies for protection
4 under this agreement must be clearly so designated before or when the material is
5 disclosed or produced.

6 (a) Information in documentary form: (e.g., paper or electronic
7 documents and deposition exhibits, but excluding transcripts of depositions or other
8 pretrial or trial proceedings). The designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a
10 portion or portions of the material on a page qualifies for protection, the producing
11 party also must clearly identify the protected portion(s) (e.g., by making
12 appropriate markings in the margins).

13 (b) Testimony given in deposition or in other pretrial or trial
14 proceedings: The parties must identify on the record, during the deposition, hearing,
15 or other proceeding, all protected testimony, without prejudice to their right to so
16 designate other testimony after reviewing the transcript. Any party or non-party
17 may, within fifteen days after receiving a deposition transcript, designate portions
18 of the transcript, or exhibits thereto, as confidential.

19 (c) Other tangible items: the producing party must affix in a
20 prominent place on the exterior of the container or containers in which the
21 information or item is stored the word “CONFIDENTIAL.” If only a portion or

1 portions of the information or item warrant protection, the producing party, to the
2 extent practicable, shall identify the protected portion(s).

3 4.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the
5 designating party's right to secure protection under this agreement for such
6 material. Upon timely correction of a designation, the receiving party must make
7 reasonable efforts to ensure that the material is treated in accordance with the
8 provisions of this agreement.

9 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 Any party or non-party may challenge a designation of confidentiality at any
11 time. The parties shall follow the applicable rules of civil procedure in challenging
12 confidentiality designations.

13 6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this action as
17 "CONFIDENTIAL," that party must:

18 (a) promptly notify the designating party in writing and include a copy of
19 the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order
21 to issue in the other litigation that some or all of the material covered by the

1 subpoena or order is subject to this agreement. Such notification shall
2 include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be
5 affected.

6 7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
8 confidential material to any person or in any circumstance not authorized under this
9 agreement, the receiving party must immediately (a) notify in writing the
10 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
11 all unauthorized copies of the protected material, (c) inform the person or persons to
12 whom unauthorized disclosures were made of all the terms of this agreement, and
13 (d) request that such person or persons execute the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a producing party gives notice to receiving parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the receiving parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
21 may be established in an e-discovery order or agreement that provides for production

1 without prior privilege review. Parties shall confer on an appropriate non-waiver
2 order under Fed. R. Evid. 502.

3 9. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each
5 receiving party must return all confidential material to the producing party, including
6 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
7 appropriate methods of destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival
9 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
10 correspondence, deposition and trial exhibits, expert reports, attorney work product,
11 and consultant and expert work product, even if such materials contain confidential
12 material.

13 The confidentiality obligations imposed by this agreement shall remain in
14 effect until a designating party agrees otherwise in writing or a court orders
15 otherwise.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
17 and provide copies to counsel.

18 **DATED** August 21, 2018.

19
20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
21 United States District Judge