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5 *Attorneys for Plaintiffs*

6  
 7 **UNITED STATES DISTRICT COURT**  
 8 **DISTRICT OF ARIZONA**

9 ROBERT H. and MARCIA MALLIN,  
 10 husband and wife,

11 Plaintiffs,

12 v.

13 PROGRESSIVE NORTHWESTERN  
 INSURANCE COMPANY, a foreign  
 14 corporation, JOHN and JANE DOES I-  
 X, ABC CORPORATIONS I-X; and  
 15 XYZ PARTNERSHIPS I-X,

16 Defendant.  
 17

Case No.: 2:06cv0593-HRH

**PLAINTIFFS' MOTION FOR  
 PROTECTIVE ORDER OF ROBERT  
 H. MALLIN'S RECORDS FROM  
 DAVID N. BOYER, M.D., P.C.**

**(Expedited Telephonic Oral  
 Argument Requested)**

18 Plaintiffs Robert H. and Marcia Mallin (hereinafter "Plaintiffs"), move this  
 19 Court for an order of protection regarding the production of Robert H. Mallin's  
 20 psychiatric records from Dr. David N. Boyer, M.D., P.C. Plaintiffs ask the Court  
 21 to order that Dr. Boyer be allowed to submit a summary report of Mr. Mallin's  
 22 treatment in lieu of producing all of Mr. Mallin's records to Defendant  
 23 Progressive Northwestern Insurance Company ("Progressive").

24 Plaintiffs support their motion with the following Memorandum.  
 25



1 wrote to Defendant Progressive and requested that in lieu of producing Mr.  
2 Mallin's entire medical records he write a summary report of his treatment of Mr.  
3 Mallin which would address matters specially related to the issues in case  
4 (Exhibit 1).

5 Defendant's counsel, Steven Plitt, responded to Dr. Boyer's letter that  
6 same date (Exhibit 2). Mr. Plitt refused Dr. Boyer's request for a reasonable  
7 accommodation, stating that writing a summary report of Mr. Mallin's treatment,  
8 "will not be acceptable." Dr. Boyer, concerned about his obligation to maintain  
9 confidentiality of his patient's records on tangential issues that relate to other  
10 Mallin family members, has refused to produce the records pending this Court's  
11 decision.

12 This action concerns Defendant Progressive's conduct in adjustment of  
13 an under-insured motorist claim and has nothing to do with other Mallin family  
14 members. In addition to chronicling the effect of Progressive's handling of his  
15 claim on the Mallin marriage, Dr. Boyer's records mostly contain a variety of  
16 other concerns which are completely unrelated to Mr. Mallin's complaint against  
17 Progressive. The records sought by Defendant contain confidential information  
18 that pertains not only to Mr. Mallin, but his family members as well – information  
19 that does not relate to any issues of this case, and which in basic fairness  
20 should not be disclosed. Accordingly, the interests of privacy and simple  
21 decency warrant that the records containing this evidence be excluded from  
22 production.

23 Plaintiffs therefore request that the Court order that Dr. Boyer produce a  
24 summary report of Mr. Mallin's treatment that addresses the one area of  
25

1 emotional distress claimed by Mr. Mallin to have been caused by Defendant –  
2 namely, the effect of Defendant’s conduct on Mr. Mallin’s marriage.

3  
4 **RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of November, 2006.

5  
6  
7 **TREON & SHOOK, P.L.L.C.**

8  
9 By: s\ Daniel B. Treon  
10 Daniel B. Treon  
11 2700 N. Central Ave., Suite 1000  
12 Phoenix, AZ 85004

13 **ORIGINAL** of the foregoing electronically filed  
14 this 13<sup>th</sup> day of June, 2007 with:

15 Clerk of the Court  
16 USDC, District of Arizona  
17 Sandra Day O’Connor U.S. Courthouse  
18 401 W. Washington St.  
19 Phoenix, AZ 8503-2118

20 **COPY** of the foregoing electronically delivered  
21 this 13<sup>th</sup> day of June, 2007 to:

22 Steven Plitt, Esq.  
23 **KUNZ PLITT HYLAND DEMLONG & KLEIFIELD**  
24 3838 N. Central Avenue, Suite 1500  
25 Phoenix, AZ 85012-1902  
*Attorneys for Defendant*  
*Progressive Northwestern Insurance Company*

By: s\ Laura L. Quesada