

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**MARJORIE C. "CAM" MANNING
and CHARLES H. MANNING**

PLAINTIFFS

VS.

CASE NO. 4:09CV00302 JMM

**UNITED STATES OF AMERICA,
VETERANS ADMINISTRATION;
and BAGHERZADEH AZAR, M.D.**

DEFENDANTS

CONSENT PROTECTIVE ORDER

Pursuant to the Privacy Act, 5 U.S.C. § 552a and 45 C.F.R. Parts 160 and 164, the United States is required to maintain the confidentiality of records and information pertaining to individuals employed at the United States Veterans Administration ("VA"). Plaintiff seeks personnel files of current and former employees of the VA. These files contain confidential and identifying information. Release of the information through trial preparation or trial in this case will likely make the information publicly available and likely invade the privacy of the aforementioned individuals.

In order to permit the parties to discover and to introduce into evidence information relevant to this action without undermining or violating the Privacy Act or 45 C.F.R. Parts 160 and 164, the parties have sought an Order of the court permitting the United States to produce such relevant personnel files to plaintiffs and permitting the parties to use such medical records and personnel files solely for the purposes of this litigation.

In the course of discovery or litigation, medical records or information from medical records may be disclosed. These records or this information is also subject to this Order.

Pursuant to the Privacy Act, 5 U.S.C. § 522a and 45 C.F.R. Parts 160 and 164, it is hereby ORDERED:

1. This Order applies to, governs, and directs the disclosure in the course of this action of all VA medical records, personal information from medical records, and personnel files.

2. All VA medical records, personnel files, and personal information gleaned from these records shall be subject to this Protective Order.

3. Counsel for the United States will redact sensitive and personal information from the VA personnel files produced, including but not limited to Social Security numbers, residence addresses, phone numbers, including cell phone numbers, dates of birth, names of minor children, and other such personal information.

4. This Order is not intended to compromise the rights of any party to object to discovery pursuant to the Federal Rules of Civil Procedure or any other governing authority nor is it intended to alter any burden of proof regarding any assertion of privilege in this matter.

5. The parties may use VA medical records or personnel files produced by the United States pursuant to this Order in conducting further discovery in this case. The parties also may use VA medical records or personnel files produced by the United States pursuant

to this Order in all law and motion proceedings. However, the parties agree, and the court orders, that these VA medical records and personnel files will be filed under seal.

6. The right of access to all materials designated as subject to this Order shall be limited to the parties, counsel for the parties and their staff, fact witnesses in the employ of the United States or subject to non-disclosure obligations as employees of the United States, whether current or former, and experts or opinion witnesses in the parties' employ or under contract to the parties or their counsel, persons with factual knowledge who may be called as witnesses at any hearing, provided that such disclosure is reasonably and in good faith calculated to aid in litigating these consolidated cases; and any other person mutually authorized by all counsel or parties to examine such materials. This right of access to these materials shall be provided only if a party or counsel for the party is a signatory to this Order and agrees to be bound by its terms. Any person having access to information subject to this Order shall be informed that it is confidential and subject to a nondisclosure Order of the court.

7. Except as provided in this Order, no person having access to material designated as subject to this Order shall make public disclosure of those materials without further Order of the court or stipulation of the parties. No use will be made of these documents or the information contained in them for any purpose other than trial preparation or trial in this litigation.

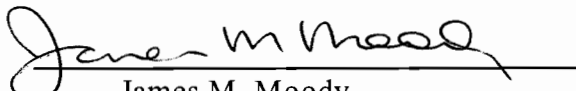
8. Nothing contained in this Order shall be construed as precluding plaintiff or defendants from introducing materials that are subject to this Order, or the contents thereof, into evidence at trial of this case. However, in the event that any material subject to this Order is used in any court proceeding herein, it shall not lose its status through such use, and the parties shall take all steps reasonably necessary to protect its confidentiality.

9. Upon conclusion of this action (including appeals), all copies of VA medical records and personnel files protected by this Order (except copies of documents accepted into evidence) made pursuant to the terms of this Order shall be returned to Defendant United States of America.

10. No modification of this Order will be made, nor any additional use of the VA medical records or personnel files authorized, except on order of the court following written application to the court and after an opportunity for all parties to be heard. This Order is without prejudice to the rights of any party to make any objection to discovery permitted by the Federal Rules of Civil Procedure, or by any statute or other authority.

11. This Order shall be effective upon all persons, including parties, counsel, counsel's staff, and witnesses in this litigation. It is enforceable by the contempt powers of this court.

ENTERED this 23 day of February, 2010.


James M. Moody
United States District Court Judge

APPROVED BY:

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