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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

United States of America ex rel.;  
Manijeh Nikakhtar, M.D.,  
  
Plaintiff,  
  
v.  
  
Mission City Community Network,  
Inc.; Nik Gupta, and Does 1 to 10,  
inclusive,  
  
Defendant.

Case No. 12-cv-3692-PSG (SHx)  
**STIPULATED QUALIFIED  
PROTECTIVE ORDER**

1        1.     PRELIMINARY INFORMATION

2                1.1.    PURPOSES AND LIMITATIONS

3                This action involves plaintiff Manijeh Nikakhtar, M.D.’s (“Plaintiff”)  
4        allegations that defendants Mission City Community Network, Inc. (“MCCN”) and  
5        Nik Gupta (“Gupta;” collectively, “Defendants”) have violated the Federal False  
6        Claims Act, 31 U.S.C. § 3729.

7                MCCN is a Federally Qualified Health Clinic, or “FQHC” under  
8        42 C.F.R. § 405.2401. As such, MCCN is a “Covered Entity” within the meaning  
9        of 45 C.F.R. § 160.103 and is required to protect and safeguard Protected Health  
10       Information from disclosure. In light of MCCN’s status and also the nature of  
11       Plaintiff’s allegations, discovery in this action is likely to involve the production of  
12       “Protected Health Information” as defined in 45 C.F.R. § 160.103. Accordingly,  
13       the parties hereby stipulate to and petition the Court to enter the following  
14       Stipulated Qualified Protective Order, pursuant to Rule 26(c) of the Federal Rules  
15       of Civil Procedure and 45 C.F.R. § 164.512(e).

16               The parties acknowledge that this Order does not confer blanket protections  
17       on all disclosures or responses to discovery and that the protection it does afford  
18       from public disclosure and use extends only to the limited Protected Health  
19       Information that is protected under the privacy rules of the Health Insurance  
20       Portability and Accountability Act (“HIPAA”), 45 C.F.R. § 160 *et seq.*, that govern  
21       the disclosure of such information. The parties further acknowledge that, as set  
22       forth below, any attempt to file under seal documents and/or information designated  
23       as Protected Health Information under this Order must comply with Civil Local  
24       Rule 79-5 and with any pertinent orders of the Honorable Philip S. Gutierrez and  
25       the Honorable Stephen J. Hillman, including any procedures adopted under the  
26       Pilot Project for the Electronic Submission and Filing of Under Seal Documents.

27                1.2.    GOOD CAUSE STATEMENT

28                This action is likely to involve Protected Health Information that is now, or

1 previously was, entrusted to a Covered Entity, as set forth in 45 C.F.R. § 160.103  
2 and which is protected from disclosure under state or federal statutes including  
3 HIPAA. The parties and any other Covered Entities that may be identified as third  
4 party witnesses during the course of this action are prohibited from disclosing  
5 Protected Health Information. However, 45 C.F.R. § 164.512(e) *et seq.* provides  
6 that a Covered Entity can permissibly disclose Protected Health Information in the  
7 course of any judicial proceeding in response to a court order. Accordingly, to  
8 ensure that the parties have access to the Protected Health Information necessary to  
9 prosecute and/or defend this action and to protect Protected Health Information at  
10 issue, this protective order is justified.

## 11 2. DEFINITIONS

12 2.1 Action: the above-entitled lawsuit.

13 2.2 Challenging Party: a Party or Non-Party that challenges the  
14 designation of information or items under this Order.

15 2.3 Designating Party: a Party or Non-Party that designates information or  
16 items that it produces in disclosures or in responses to discovery as “PROTECTED  
17 HEALTH INFORMATION.”

18 2.4 Counsel: outside counsel of record in the Action and in-house counsel  
19 of any party and support staff.

20 2.4 Covered Entity: the term “Covered Entity” shall have the same scope  
21 and definition as set forth in 45 C.F.R. § 160.103.

22 2.5 “Protected Health Information” or “PHI”: the terms “Protected Health  
23 Information” and “PHI” shall have the same scope and definition as the term  
24 “Protected Health Information” in 45 C.F.R. § 160.103.

25 2.6 Disclosure or Discovery Material: all items or information, regardless  
26 of the medium or manner in which it is generated, stored, or maintained that are  
27 produced or generated in disclosures or responses to discovery in this Action.

28 2.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the action who has been retained by a party or a party's Counsel to  
2 serve as an expert witness or as a consultant in this Action.

3 2.8 Party: any party to this Action, including all of its officers, directors,  
4 employees, consultants, Experts, and Counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association, or  
6 other legal entity not named as a Party to this Action.

7 2.9 Producing Party: a Party or Non-Party that produces Disclosure or  
8 Discovery Material in this Action.

9 2.10 Professional Vendors: persons or entities that provide litigation  
10 support services and their employees and subcontractors.

11 2.11 Receiving Party: a Party that receives Disclosure or Discovery  
12 Material in this Action.

### 13 3. SCOPE OF ORDER

14 All Covered Entities are hereby authorized to disclose to Counsel in the  
15 Action Protected Health Information related to patients of MCCN who were treated  
16 by Plaintiff in connection with Plaintiff's tenure as a contracting physician with  
17 MCCN between August 3, 2009 and September 14, 2009.

### 18 4. DESIGNATION OF PROTECTED HEALTH INFORMATION

19 4.1 Except as otherwise ordered by the Court herein or by subsequent  
20 order, Disclosure or Discovery Material that qualifies as Protected Health  
21 Information must be clearly so designated before the material is disclosed or  
22 produced.

23 4.2 For information in documentary form, the Producing Party shall affix  
24 at a minimum, the label "PROTECTED HEALTH INFORMATION" or "PHI" to  
25 each page that contains or constitutes such information.

26 4.3 A Party or Non-Party that makes original documents available for  
27 inspection, shall notify the Receiving Party which information constitutes and/or  
28 contains Protected Health Information.

1           4.4    The Designating Party shall identify which information, if any,  
2 contained in deposition testimony is Protected Health Information prior to the close  
3 of deposition.

4    5.    INADVERTENT FAILURE TO DESIGNATE

5           Upon timely correction of a failure to designate material as Protected Health  
6 Information, the Receiving Party must make reasonable efforts to ensure that the  
7 material is treated in accordance with the provisions of this Order.

8    6.    CHALLENGING DESIGNATIONS

9           Any Party may challenge a designation of Protected Health Information at  
10 any time. The Challenging Party shall initiate the dispute resolution process under  
11 Local Rule 37-1, 37-2, and 37-3. Frivolous challenges and those made for an  
12 improper purpose (e.g. to harass, annoy, or to impose unnecessary expenses) may  
13 impose the Challenging Party to sanctions. All Parties shall continue to afford the  
14 Disclosure and Discovery Material in question the level of protection to which  
15 Protected Health Information is entitled until the Court rules on the challenge. The  
16 burden of demonstrating that the Disclosure or Discovery Material is Protected  
17 Health Information shall be on the Designating Party.

18   7.   ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

19           A Receiving Party may use Protected Health Information disclosed and/or  
20 produced pursuant to this Order only for prosecuting, defending, or attempting to  
21 settle this Action. Protected Health Information may only be disclosed to the  
22 categories of persons and under the conditions described in this Order. The  
23 Receiving Party must store any and all Protected Health Information that it receives  
24 in connection with this Action in a secure manner that ensures that access is limited  
25 to the persons authorized by this Order.

26           Unless otherwise ordered by the Court, a Receiving Party may only disclose  
27 items and/or information designated as Protected Health Information or PHI to:  
28 Counsel; Experts who have agreed, in writing, to be bound by this Order by

1 executing an acknowledgement in the form attached hereto as *Exhibit 1* (the  
2 “Acknowledgement”) or an equivalent HIPAA-compliant “Business Associate”  
3 agreement; the Court and Court personnel; court reporters and their staff;  
4 Professional Vendors who have agreed, in writing, to be bound by this Order by  
5 executing the Acknowledgement or an equivalent HIPAA-compliant “Business  
6 Associate” agreement; during their deposition, witnesses and attorneys for  
7 witnesses in the Action to whom disclosure is reasonably necessary to prosecute or  
8 defend this Action, provided that such persons agree, in writing, to be bound by this  
9 Order by executing the Acknowledgement; any mediator or settlement officer and  
10 their supporting staff in connection with settlement discussions.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH  
12 INFORMATION

13 If a Receiving Party discovers that, by inadvertence or otherwise, it has  
14 disclosed Protected Health Information to any person or in any circumstance not  
15 authorized under this Order, the Receiving Party must immediately notify the  
16 Designating Party in writing; use best efforts to retrieve all unauthorized copies of  
17 the Protected Health Information, inform the person to whom unauthorized  
18 disclosures were made of this Order; and request that such person agree, in writing,  
19 to be bound by this Order by executing the Acknowledgement.

20 9. MISCELLANEOUS

21 Nothing in this Order abridges the right of any party to seek its modification  
22 by the Court in the future. By stipulating to the entry of this Order, no Party waives  
23 any right it would otherwise have to object to disclosing or producing any  
24 information or item on any ground not addressed in this Order. Similarly, no Party  
25 waives any right to object on any ground to use in evidence of any of the material  
26 covered by this Order.

27 10. FILING PROTECTED HEALTH INFORMATION

28 Any Party that seeks to file under seal any documents and/or information

1 designated as Protected Health Information hereunder must comply with Civil  
2 Local Rule 79-5 and with any pertinent orders of the Honorable Philip S. Gutierrez  
3 and the Honorable Stephen J. Hillman, including any procedures adopted under the  
4 Pilot Project for the Electronic Submission and Filing of Under Seal Documents.  
5 Such information may only be filed under seal pursuant to a showing of good cause  
6 and a court order authorizing the sealing of specific materials at issue. If a Party's  
7 request to file under seal is denied by the Court, then the Receiving Party may file  
8 the information in the public record unless otherwise instructed by the Court.

9 11. FINAL DISPOSITION

10 After the final disposition in this Action, within 45 days of a written request  
11 by the Designating Party, each Receiving Party must return or destroy all  
12 designated materials, including all copies, abstracts, compilations, summaries, and  
13 any other format reproducing or capturing any of the Protected Health Information  
14 to the Producing Party. The Receiving Party must also submit a written  
15 certification to the Producing Party by the 45 day deadline that (1) identifies all  
16 Protected Health Information that was returned or destroyed and (2) affirms that the  
17 Receiving Party has not retained any copies, abstracts, compilations.

18 12. VIOLATIONS OF THIS ORDER

19 Any violation of this Order may be punished by any and all appropriate  
20 measures, including contempt proceedings and/or monetary sanctions.

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: September 22, 2014



Stephen J. Hillman,  
United States Magistrate Judge



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**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, of \_\_\_\_\_, declare under penalty of perjury of the laws of the United States of America that I have read in its entirety and understand the Stipulated Qualified Protective Order (the "Order") that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ in the case entitled *United States ex rel. v. Mission City Community Network, Inc.*, USDC Case No. 12-cv-3692-PSG (SHx). I agree to comply with and be bound by all terms of the Order and I understand and acknowledge that failure to do so could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Order, if such enforcement proceedings occur after termination of this Action. I hereby appoint \_\_\_\_\_, located at \_\_\_\_\_ as my California agent for service of process in connection with this action or any proceedings related to the Order.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name