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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 (JCx)

**AMENDED 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 Jacqueline Chooljian, including any procedures adopted under the
26 Pilot Project for the Electronic Submission and Filing of Under Seal Documents.

1 1.2. GOOD CAUSE STATEMENT

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

13 2. DEFINITIONS

14 2.1 Action: the above-entitled lawsuit.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

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

20 2.4 Counsel: outside counsel of record in the Action and in-house counsel
21 of any party and support staff.

22 2.4 Covered Entity: the term “Covered Entity” shall have the same scope
23 and definition as set forth in 45 C.F.R. § 160.103.

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

27 2.6 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained that are

1 produced or generated in disclosures or responses to discovery in this Action.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the action who has been retained by a party or a party's Counsel to
4 serve as an expert witness or as a consultant in this Action.

5 2.8 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, Experts, and Counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this Action.

9 2.9 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.10 Professional Vendors: persons or entities that provide litigation
12 support services and their employees and subcontractors.

13 2.11 Receiving Party: a Party that receives Disclosure or Discovery
14 Material in this Action.

15 3. SCOPE OF ORDER

16 All Covered Entities are hereby authorized to disclose to Counsel in the
17 Action Protected Health Information related to adult patients of MCCN who
18 received medical services at MCCN on or since April 27, 2006 and for which
19 claims were submitted to Medicare for reimbursement, even if the patients were not
20 treated by Plaintiff.

21 4. DESIGNATION OF PROTECTED HEALTH INFORMATION

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

26 4.2 For information in documentary form, the Producing Party shall affix
27 at a minimum, the label "PROTECTED HEALTH INFORMATION" or "PHI" to
28 each page that contains or constitutes such information.

1 4.3 A Party or Non-Party that makes original documents available for
2 inspection, shall notify the Receiving Party which information constitutes and/or
3 contains Protected Health Information.

4 4.4 The Designating Party shall identify which information, if any,
5 contained in deposition testimony is Protected Health Information prior to the close
6 of deposition.

7 5. INADVERTENT FAILURE TO DESIGNATE

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

11 6. CHALLENGING DESIGNATIONS

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

21 7. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

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

1 Unless otherwise ordered by the Court, a Receiving Party may only disclose
2 items and/or information designated as Protected Health Information or PHI to:
3 Counsel; Experts who have agreed, in writing, to be bound by this Order by
4 executing an acknowledgement in the form attached hereto as *Exhibit 1* (the
5 “Acknowledgement”) or an equivalent HIPAA-compliant “Business Associate”
6 agreement; the Court and Court personnel; court reporters and their staff;
7 Professional Vendors who have agreed, in writing, to be bound by this Order by
8 executing the Acknowledgement or an equivalent HIPAA-compliant “Business
9 Associate” agreement; during their deposition, witnesses and attorneys for
10 witnesses in the Action to whom disclosure is reasonably necessary to prosecute or
11 defend this Action, provided that such persons agree, in writing, to be bound by this
12 Order by executing the Acknowledgement; any mediator or settlement officer and
13 their supporting staff in connection with settlement discussions.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH
15 INFORMATION

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

23 9. MISCELLANEOUS

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

1 covered by this Order.

2 10. FILING PROTECTED HEALTH INFORMATION

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

13 11. FINAL DISPOSITION

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

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12. VIOLATIONS OF THIS ORDER

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

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: June 1, 2015

/s/
Honorable Jacqueline Chooljian
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 (JCx). 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