

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-03422

ARAPAHOE SURGERY CENTER, LLC,
CHERRY CREEK SURGERY CENTER, LLC,
HAMPDEN SURGERY CENTER, LLC,
KISSING CAMELS SURGERY CENTER, LLC,
SURGCENTER OF BEL AIR, LLC, and
WESTMINSTER SURGERY CENTER, LLC,

Plaintiffs,

v.

CIGNA HEALTHCARE, INC.,
CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
CIGNA HEALTHCARE - MID-ATLANTIC, INC., and
CIGNA HEALTHCARE OF COLORADO, INC.,

Defendants.

**AGREEMENT REGARDING THE PRODUCTION OF MATERIALS FROM RELATED
ACTION**

Plaintiffs and Counterclaim Defendants Arapahoe Surgery Center, LLC (“Arapahoe”), Cherry Creek Surgery Center, LLC (“Cherry Creek”), Hampden Surgery Center, LLC (“Hampden”), Kissing Camels Surgery Center, LLC (“Kissing Camels”), SurgCenter of Bel Air, LLC (“Bel Air”), Westminster Surgery Center LLC (“Westminster”), and Surgical Center Development, Inc. d/b/a SurgCenter Development (“SurgCenter”) (collectively, “Plaintiffs and Counterclaim Defendants”), Defendants and Counterclaim Plaintiffs Cigna Healthcare, Inc., Connecticut General Life Insurance

Company, Cigna Health and Life Insurance Company, Cigna Healthcare - Mid-Atlantic, Inc., and Cigna Healthcare of Colorado, Inc. (collectively, "Cigna" or "Defendants and Counterclaim Plaintiffs") (individually, a "Party" and collectively, the "Parties"), and those entities that are or have been parties or participated in discovery in *Kissing Camels Surgery Center, LLC et al v. HCA, Inc., et al.*, 12-cv-3012 (D. Colo.) ("The *HCA* Action") HCA Inc., HCA-HealthONE LLC, Rocky Mountain Hospital and Medical Service, Inc. d/b/a Anthem Blue Cross and Blue Shield of Colorado, Colorado Ambulatory Surgery Center Association, Audubon Ambulatory Surgical Center, LLC, Aetna, Inc., Centura Health Corporation, United Healthcare of Colorado, Inc., the Kaiser Foundation Health Plan of Colorado, Humana Health Plan, Inc., and Pinnacle III (together with Arapahoe, Cherry Creek, Hampden, and Kissing Camels, the "*HCA* Parties") agree as follows regarding the production of materials in the *HCA* Action to the Parties in the above-captioned Action:

1. The *HCA* Parties agree that each Party to the above-captioned Action shall have the right to use all materials produced in and associated with the *HCA* Action, including documents and data produced by any party or non-party, answers to interrogatories, responses to requests for production, responses to requests for admission, responses to non-party subpoenas, expert disclosures, and deposition testimony ("*HCA* Action Materials") for any purpose in connection with the above-captioned Action, so long as such use does not violate the terms of *the HCA Protective Orders* (defined in Section 2 of this Agreement) or any protective order entered in the above-captioned Action. For the avoidance of doubt, the *HCA* Action Materials shall be

used by the Parties to the above-captioned Action or the *HCA* Action solely in connection with the above-captioned Action or the *HCA* Action and for no other purpose, and agree that any breach of this commitment will cause damage and harm to the offended *HCA* Party(ies).

2. The Parties to the above-captioned Action agree to be bound by and comply with the terms of the protective orders in the *HCA* Action dated April 8, 2013 (D.E. 79) and October 10, 2013 (D.E. 141) (the “*HCA* Protective Orders”) with respect to *HCA* Action Materials, and agree that the *HCA* Action Materials shall be afforded any additional protections contained in any protective order entered into in the above-captioned Action. The Parties to the above-captioned Action also agree to provide to the remaining non-dismissed Defendants in the *HCA* Action any documents produced by Cigna and/or the Colorado-based entities in the above-captioned Action within the scope of any of the discovery requests served by any of the parties in the *HCA* Action, at the time such documents are produced, and pursuant to and subject to the compliance of the party receiving such production with the *HCA* Protective Orders, unless and until the Parties to the *HCA* Action notify the Parties to the above-captioned Action that such production is no longer necessary. Any disputes regarding compliance with the *HCA* Protective Orders shall be raised with the Court overseeing the *HCA* Action.

3. To the extent a party notices a deposition in the *HCA* Action, counsel for such party agrees to provide Cigna with sufficient advance notice of all depositions scheduled to take place in the *HCA* Action and to coordinate with Cigna regarding the

scheduling of depositions in the *HCA* Action, so that Cigna may participate in such depositions. Counsel for the Parties to the above-captioned Action agree to provide the non-dismissed *HCA* Parties with advance notice of all depositions scheduled to take place in the above-captioned Action and to coordinate with the *HCA* Parties regarding the scheduling of depositions in the above-captioned Action, so that the *HCA* Parties may participate in such depositions, unless and until the Parties to the *HCA* Action notify the Parties to the above-captioned Action that such notice and coordination is no longer necessary.

4. Plaintiffs and Counterclaim Defendants agree to produce to Cigna all *HCA* Action materials in its possession as of the date of this Agreement within two weeks of the execution of this agreement by counsel for the Parties and counsel for the *HCA* Parties, and further to agree to produce to Cigna any additional *HCA* Action Materials produced thereafter at the time such materials are produced.

APPROVED AS TO FORM AND CONTENT

Dated: June 16, 2014

Respectfully submitted,

By: /s/ Edwin P. Aro
Edwin P. Aro
ARNOLD & PORTER LLP
370 Seventeenth Street, Suite 4400
Denver, CO 80202
Tel: (303) 863-1000
ed.aro@aporter.com

Joshua B. Simon
Warren Haskel
Ryan D. McEnroe
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10016
Tel: (212) 446-4800
Fax: (212) 446-4900
joshua.simon@kirkland.com
warren.haskel@kirkland.com
ryan.mcenroe@kirkland.com

*Counsel for Defendants and Counterclaim
Plaintiffs*

By: /s/ Joe R. Whatley, Jr.
Joe R. Whatley, Jr.
Colorado State Bar No. 38820
WHATLEY KALLAS, LLP
720 East Durant Avenue, Suite E6
Aspen, CO 81611
Tel: (970) 300-4848
Fax: (970) 427-5536
Email: jwhatley@whatleykallas.com

Edith M. Kallas
WHATLEY KALLAS, LLP
380 Madison Avenue, 23rd Floor
New York, NY 10017
Tel: (212) 447-7060
Fax: (800) 922-4851
Email: ekallas@whatleykallas.com

Deborah J. Winegard
WHATLEY KALLAS, LLP
1068 Virginia Avenue, NE
Atlanta, GA 30306
Tel.: (404) 607-8222
Fax: (404) 607-8451
Email: dwinegard@whatleykallas.com

W. Tucker Brown
WHATLEY KALLAS, LLP
2001 Park Place Tower, Suite 1000
Birmingham, AL 35203
Tel.: (205) 488-1200
Fax: (800) 922-4851
Email: tbrown@whatleykallas.com

Henry C. Quillen
WHATLEY KALLAS, LLP
1259 Middle Street, Suite 2C
Portsmouth, NH 03801

Tel: (603) 294-1591
Fax: (800) 922-4851
Email: hquillen@whatleykallas.com

*Counsel for Plaintiffs, Counterclaim
Defendants, and Plaintiffs in Kissing
Camels Surgery Center, LLC et al v. HCA,
Inc., et al., 12-cv-3012 (D. Colo.)*

/s/ Kevin J. Arquit

Kevin J. Arquit
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017-3954
Tel: (212) 455-2000
Fax: (212) 455-2502

John A. Francis
Erin McAlpin Eiselein
Natalie West
DAVIS GRAHAM & STUBBS LLP
1550 17th Street, Suite 500
Denver, CO 80202
Tel: (303) 892-9400
Fax: (303) 893-1379

Abram J. Ellis
SIMPSON THACHER & BARTLETT LLP
1155 F Street, N.W.
Washington, D.C. 20004
Tel: (202) 636-5500
Fax: (202) 636-5502

*Attorneys for HCA Inc. and HCA-
HealthONE LLC*

/s/ Kathryn A. Reilly

Kathryn A. Reilly, #37331
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202-5647

/s/ E. Desmond Hogan

Craig A. Hoover
E. Desmond Hogan
HOGAN LOVELLS US LLP
555 13th Street NW
Columbia Square
Washington, DC 20004-1109
Tel: (202) 637-5600
Fax: (202) 637-5910
desmond.hogan@hoganlovells.com
craig.hoover@hoganlovells.com

Michael C. Theis
David A. DeMarco
HOGAN LOVELLS US LLP
1200 17th Street
One Tabor Center
Suite 1500
Denver, CO 80202
Tel: (303) 899-7300
Fax: (303) 899-7333
michael.theis@hoganlovells.com
david.demarco@hoganlovells.com

*Attorneys for Rocky Mountain Hospital and
Medical Service, Inc. d/b/a Anthem Blue
Cross and Blue Shield of Colorado*

/s/ Lawrence J. Katz

Lawrence J. Katz
Foster Graham Milstein & Calisher, LLP
360 South Garfield Street, 6th Floor
Denver, CO 80209

Tel: (303) 244-1983
Fax: (303) 244-1879
reilly@wtotrial.com

*Attorneys for Colorado Ambulatory Surgery
Center Association*

/s/ Joshua Lipton

Joshua Lipton
GIBSON, DUNN & CRUTCHER LLP
1500 Connecticut Ave., N.W., 3rd Floor
Washington, DC 20036-5303
Tel: (202) 955-8226
Fax: (202) 530-9536
jlipton@gibsondunn.com

Laura Sturges
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, CO 80202-2642
Tel: (303) 298-5700
Fax: (303) 313-2825

Attorneys for Aetna, Inc.

/s/ Jonathan S. Bender

James E. Hartley
Geraldine A. Brimmer
Jonathan S. Bender
Nadya C. Bosch
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
Tel: (303) 295-8000
jhartley@hollandhart.com
gbrimmer@hollandhart.com
jsbender@hollandhart.com
ncbosch@hollandhart.com

*Attorneys for Kaiser Foundation Health Plan
of Colorado*

Tel: (303) 333-9810
lkatz@fostergraham.com

*Attorney for Audubon Ambulatory Surgical
Center, LLC*

/s/ Melvin B. Sabey

Melvin B. Sabey
KUTAK ROCK LLP
1801 California Street, Suite 3100
Denver, CO 80202
Tel: (303) 297-2400
mel.sabey@kutakrock.com

Thomas Demitrack
Robert E. Haffke
JONES DAY
901 Lakeside Avenue East
Cleveland, OH 44114
Tel: (216) 586-7141
tdemitrack@jonesday.com
rhaffke@jonesday.com

Toby G. Singer
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
Tel: (202) 879-4654
tgsinger@jonesday.com

Attorneys for Centura Health Corporation

/s/ Andrew D. Ringel

Andrew D. Ringel
Daniel Furman
Hall & Evans, LLC-Denver
1001 17th Street
Suite 300
Denver, CO 80202
Te: (303) 628-3300
Fax: 303-293-3238

/s/ Richard Benenson

Richard B. Benenson
Karl L. Schock
Lawrence W. Treece
Brownstein Hyatt Farber Schreck, LLP
410 17th Street #2200
Denver, CO 80202-4432
Tel: 303-223-1100
Fax: 303-223-1111
rbenenson@bhfs.com
kschock@bhfs.com
ltreece@bhfs.com

*Attorneys for United Healthcare
of Colorado, Inc.*

ringela@hallevans.com
furmand@hallevans.com

Attorneys for Humana Health Plan, Inc.

/s/ Kelly Duke

Kelly Duke
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, CO 80202
Direct: (303) 628-3663
Fax: (303) 623-2062
kduke@irelandstapleton.com

Attorneys for Pinnacle III