

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

HOWARD ADELMAN and JUDITH
SCLAWY-ADELMAN, as Co-Personal
Representative of the Estate of
MICHAEL SCLAWY-ADELMAN,

CASE NO. 1:10-cv-22236-ASG

HONORABLE ALAN S. GOLD

Plaintiffs,

v.

BOY SCOUTS OF AMERICA, THE
SOUTH FLORIDA COUNCIL, INC.;
BOY SCOUTS OF AMERICA;
PLANTATION UNITED METHODIST
CHURCH; HOWARD K.
CROMPTON, individually; and
ANDREW L. SCHMIDT, individually,

Defendants.

_____ /
**DEFENDANTS, HOWARD K. CROMPTON, AND ANDREW L. SCHMIDT'S,
UNOPPOSED MOTION FOR HIPAA QUALIFIED PROTECTIVE ORDER AND
ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION**

COME NOW, the Defendants, HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, by and through their undersigned counsel, and hereby file this Unopposed Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information, pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and 45 C.F.R. § 164.512(e)(1), and as grounds in support thereof, state as follows:

1. Plaintiff in this action has alleged damages which place at issue, or which are reasonably anticipated to become at issue, certain protected health information

(“PHI”) within the meaning of the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

2. Generally speaking, HIPAA provides more wide-ranging privacy protections for protected health information than previously existed under Florida law. Accordingly, it prohibits the disclosure or use of any person’s PHI in litigation or other proceeding unless satisfactory safeguards are in place to limit the use and disclosure of the PHI. See 45 C.F.R. § 164.512(e).

3. Accordingly, 45 C.F.R. § 164.512(e)(1)(ii)(B) provides that HIPAA’s privacy standards are satisfied by, *inter alia*, by issuing a subpoena accompanied by a HIPAA “Qualified Protective Order”. HIPAA further provides in 45 C.F.R. § 164.512(e)(1)(v) that such order must:

- (1) Prohibit the parties from using or disclosing the PHI for any purpose other than the subject litigation; and
- (2) Require that the PHI (including all copies made) be destroyed, or returned to the health care provider from whom the PHI was obtained, at the conclusion of the litigation.

4. Defendants therefore request that this Court enter a HIPAA Qualified Protective Order to enable the parties to issue subpoenas to medical providers and others in possession of Plaintiff’s PHI in accordance with HIPAA’s requirements.

5. In addition, because no subpoena is involved, the regulations of HIPAA make no specific provision to allow a party or a party’s counsel who receives PHI to re-disclose such records in response to Interrogatories or a Request for Production.

6. The regulations also make no provision for persons duly noticed for

deposition in this litigation, particularly parties who are not subject to a subpoena, to use or disclose PHI in response to deposition questions or a duces tecum or to an expert.

7. In these instances, the HIPAA regulations provide under 45 C.F.R. § 164.512(3)(1)(i) provides that “[a] covered entity may disclose protected health information in the course of any judicial or administrative proceeding...[I]n response to an order of a court or administrative tribunal, provided that the covered entity discloses the protected health information expressly authorized by such order.”

8. Defendants therefore request that the parties and their counsel be authorized and ordered to disclose protected health information that is the subject of this lawsuit to the party’s experts concerning the case or claim and to other parties and their counsel in response to requests for copies, interrogatories, and requests for production, without waiver of any other valid and timely objections or privileges and that all duly noticed deponents be similarly authorized and ordered to use and disclose protected health information of a party in response to depositions questions or a valid duces tecum at such duly noticed deposition.

L.R. 7.1(A)(3) CERTIFICATION

The undersigned counsel has conferred with counsel for Plaintiff who has agreed to the contents of this Motion and the entry of the proposed Order attached hereto as Exhibit "A".

WHEREFORE, Defendants, HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, respectfully request that this Court enter a HIPAA Qualified Protective Order

and Order to Disclose Protected Health Information substantially in the form attached as Exhibit "A" to this motion.

I HEREBY CERTIFY that on August 10, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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