

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.

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

This matter having come before this Court on Defendants, HOWARD K. CROMPTON, and ANDREW L. SCHMIDT'S, Unopposed Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information. The Court having reviewed the Motion and being fully otherwise advised in the premises, it is hereby **ORDERED** and **ADJUDGED** that the Motion is **GRANTED**, as follows:

Qualified Protective Order

1. In accordance with and defined by the regulations promulgated under HIPAA, specifically 45 C.F.R. § 164.512(e)(1)(ii)(B) and (v), the Court hereby enters a HIPAA QUALIFIED PROTECTIVE ORDER (QPO). Pursuant to this QPO, all parties to this lawsuit are:

(a) prohibited from using or disclosing protected health information ("PHI") for any purpose other than the litigation of the above styled lawsuit; and

(b) required to destroy all copies of the PHI or return them to the disclosing entity at the conclusion of the above styled lawsuit.

2. For purposes of this QPO, "conclusion" is understood to include the time for any records retention requirement and statute of limitation applicable to a party or a party's counsel. "Litigation" is understood to include all appellate proceedings or the expiration of time to commence such appellate proceedings without appeal.

3. Based upon this QPO and commencing immediately from the date if this QPO, including but not limited to physicians and other medical providers,

(a) shall comply with any and all subpoenas for records without deposition pursuant to the Federal Rules of Civil Procedure to which no objection has been timely filed as well as other subpoenas served upon them at any future time in the course of this litigation; and

(b) are authorized and ordered to use or disclose PHI in response to said subpoenas.

4. Additionally, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of HIPAA compliance, and without waiver of any right to prepayment of costs or any other appropriate objection or privilege that may be timely asserted, the attorneys, employees, agents, or designees of each party or each party's legal counsel in this case, and all duly noticed persons, are expressly and specifically **AUTHORIZED** and **ORDERED** to:

(c) respond to valid Interrogatories served pursuant to the Federal Rules of Civil Procedure in the above-styled matter seeking PHI;

(d) respond to valid Requests for Production served pursuant to the Federal Rules of Civil Procedure in the above-styled matter seeking PHI;

(e) respond to valid and timely Requests for Copies or Requests for Production from Non-Parties served pursuant to the Federal Rules of Civil Procedure in the above-styled matter for production of documents and things without deposition concerning PHI; and

(f) respond to each of a party's own experts who request, either orally or in writing, PHI for the purposes of reviewing the above-styled matter in whole or in part, regardless of whether the expert is a consulting or trial expert or is considered retained for compensation or non-retained, by disclosing and providing such requested PHI.

5. Additionally, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to prepayment of costs or any other appropriate objection or privilege that may be timely asserted, each deponent duly noticed for deposition in the above-styled litigation, including but not limited to a party, a fact witness, a records custodian, an expert, or a health care provider of any type, is expressly and specifically **AUTHORIZED** and **ORDERED** to use or to disclose to the attorneys, employees, agents, and designees of each party or each party's legal counsel in this case, the PHI of a party that is responsive to deposition questions or a valid subpoena duces tecum at such duly noticed deposition in the above-styled litigation.

6. Additionally, pursuant to 45 C.F.R. § 164,512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to the prepayment of costs or any other appropriate objection or privilege that may be timely asserted, all witnesses duly appearing at, or subpoenaed for, any judicial proceeding related to this litigation, including but not limited to trial, are specifically and expressly **AUTHORIZED** and **ORDERED** to use and disclose the PHI of a party in any form at such judicial proceeding.

7. In compliance with both HIPAA and any applicable state law not preempted by HIPAA, the authorizations and orders set forth in paragraphs 5, 6, and 7 of this Order to Disclose expressly include PHI concerning psychological and mental health

records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases if so requested.

8. The commands of the Court in paragraph 5, 6, and 7 of this Order are a separate authorization for use or disclosure of PHI in addition to, and potentially inclusive of, the use and disclosures authorized under paragraph 2 of the QPI.

9. Violation of paragraphs 5, 6, or 7 of the Order to Disclose may subject the non-compliant party, or that party's counsel, to sanctions, including but not limited to the costs and attorney's fees attributable to such non-compliance, the striking of evidence or testimony, or the striking of the party's claims or defenses.

10. Pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of HIPAA compliance, without waiver of any right to the prepayment of costs or any other appropriate objection or privilege that may be timely asserted, any person or entity authorized or ordered above to use or disclose PHI is expressly and specifically **AUTHORIZED** and **ORDERED** to do so with, to, or before any court reporter service, videographer service, translation service, photocopy service, document management service, records management service, graphics service or other such litigation service, designated by a party or a party's legal counsel in this case. The protections and requirements of paragraph 2 of the QPI apply to any such service providers. Each party or the party's legal counsel is charged with obtaining advance consent of such service to comply with this paragraph. Upon such consent, the service provider will be deemed to have voluntarily submitted to this Court's jurisdiction during the pendency of the above-styled matters for purposes of enforcement of this paragraph, including but not limited to the imposition of such sanctions as may be appropriate for any non-compliance.

11. Except for business associate agreements (as defined by HIPAA) entered into by a party or a party's legal counsel for purposes of satisfying the requirements of paragraph 11 of the Order to Disclose are separate from, and not to be deemed subject to, any business associate agreement that has been or will be executed by any party, any party's legal counsel, or any disclosing person or entity. No use or disclosure made pursuant to the Order to Disclose shall be deemed to require execution of a business associate agreement (as defined by HIPAA). The intent of the Order to Disclose is that such business associate agreements, including an requirement for such agreements under the HIPAA regulations, should be construed as inapplicable to any uses or disclosures under this Order as limited only to uses and disclosures of PHI outside of the Order to Disclose.

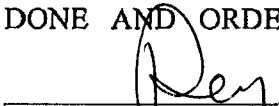
12. Unless a motion for enforcement of the Order to Disclose has been filed in this case and remains pending at the time, the Order to Disclose shall expire upon the conclusion of the litigation as defined in paragraph 3.

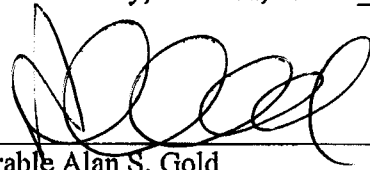
13. Nothing in the Order to Disclose or QPI shall permit the counsel for any party, other than the party representing the patient, to engage in ex parte communications with the healthcare provider, expert for those communications necessary for compliance with any subpoena duces tecum.

14. This QPI and Order to Disclose are self-executing and effective upon entry.

15. A copy of this QPI and Order to Disclose shall be valid as an original.

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

DONE AND ORDERED at Miami-Dade County, Florida, this 13 day of
 , 2010.



Honorable Alan S. Gold
United States District Judge

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