

1 Nicholas M. Wieczorek  
 Nevada State Bar No. 6170  
 2 CLARK HILL PLLC  
 3 3800 Howard Hughes Parkway, Suite 500  
 Las Vegas, Nevada 89169  
 4 Telephone: (702) 862-8300  
 nwieczorek@clarkhill.com

5  
 6 Barry A. Chasnoff  
 Texas State Bar No. 04153500 (admitted *pro hac vice*)  
 7 Blake W. Stribling  
 Texas State Bar No. 24070691 (admitted *pro hac vice*)  
 8 Adam Kiehne  
 Texas State Bar No. 24054926 (admitted *pro hac vice*)  
 9 CHASNOFF MUNGIA VALKENAAR PEPPING & STRIBLING, LLP  
 10 1020 NE Loop 410, Suite 150  
 San Antonio, Texas 78209  
 11 Telephone: (210) 469-4155  
 bchnasoff@chnasoffstribling.com  
 12 bstribling@chnasoffstribling.com  
 akiehne@chnasoffstribling.com

13  
 14 *Attorneys for Certain Underwriters at  
 Lloyd's London Subscribing to Policy No. HAH15-0632*

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 16 **UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

17 MY LEFT FOOT CHILDREN'S THERAPY,  
 18 LLC; JON GOTTLIEB AND ANN MARIE  
 GOTTLIEB,

19 Plaintiffs

20 v.

21 CERTAIN UNDERWRITERS AT LLOYD'S  
 22 LONDON SUBSCRIBING TO POLICY NO.  
 HAH15-0632,

23 Defendant.  
 24

Case No. 2:15-cv-01746-MMD-VCF

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 28 **STIPULATED  
 HIPAA QUALIFIED  
 PROTECTIVE ORDER**

1 In order to protect the confidentiality of protected health information obtained by the  
2 parties in connection with this case, the parties hereby agree as follows:

3 **A. CONFIDENTIAL MATERIAL AND INFORMATION SUBJECT TO THIS PROTECTIVE ORDER.**

4 1. Any party or non-party shall be entitled to designate as “HIPAA/Confidential” (as  
5 set forth below) any document or discovery response which that party or non-party considers in  
6 good faith to contain patient information that is protected under federal or Nevada state law,  
7 including but not limited to patient names, social security numbers, and “protected health  
8 information” as defined by the Health Insurance Portability and Accountability Act and Health  
9 Information Technology for Economic and Clinical Health Act and their implementing  
10 regulations (altogether, “HIPAA”), 45 C.F.R. § 160.103.

11 **B. CONDITIONS FOR RELEASE OF CONFIDENTIAL DOCUMENTS.**

12 2. Any party or third-party may designate discovery responses, documents produced  
13 in discovery, or deposition transcripts as confidential under this Order by stamping them as  
14 “HIPAA/Confidential” on their face, by watermarking them, or by other mutually agreeable  
15 means. If a party does not indicate that a particular document is confidential at the time it is  
16 produced, it will be presumed not confidential, without prejudice to the party’s right to assert  
17 confidentiality at a later time. Notwithstanding the foregoing, the parties acknowledge and agree  
18 that any patient record (including, but not limited to, any clinical record or payment record) that  
19 contains protected health information shall be deemed “HIPAA/Confidential” information,  
20 without regard to whether such materials are stamped, watermarked, or otherwise designated.

21 3. All “HIPAA/Confidential” documents or information produced or exchanged in  
22 the course of this case shall be accessed, viewed, or used by the party or parties to whom the  
23 information is produced solely for the purpose of this case, including appeals. Such documents  
24 and information shall not be accessed, viewed, or used by the party or parties to whom it is  
25 produced for any purpose unrelated to this case, including other litigation. Without limiting the  
26 foregoing, and solely by way of example, if an employee of a recipient of this information who  
27 has no role to play in this case views “HIPAA/Confidential” documents or information received  
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1 by the recipient pursuant to this Order, the recipient would be in violation of this Order.

2 4. The parties are prohibited from disclosing any “HIPAA/Confidential” documents  
3 or information, except as described in Paragraph 5 below.

4 5. Unless the Court orders otherwise, “HIPAA/Confidential” documents and  
5 information may be disclosed only to the extent necessary for purpose of this case and only to  
6 the following persons, to the extent they are playing a role relevant to this case:

- 7 a. counsel for the respective parties to this litigation, including in-house counsel  
8 and co-counsel retained for this litigation;
- 9 b. employees of such counsel;
- 10 c. Plaintiffs and Defendants, as well as any officer or employee of a party to the  
11 extent reasonably deemed necessary by counsel for the prosecution or defense  
12 of this litigation provided that each such person shall execute a copy of the  
13 Certification annexed to this Order as **Exhibit A** (which shall be retained by  
14 counsel);<sup>1</sup>
- 15 d. consultants or expert witnesses retained for the prosecution or defense of this  
16 litigation, provided that each such person shall execute a copy of the  
17 Certification annexed to this Order as **Exhibit A** (which shall be retained by  
18 counsel);
- 19 e. non-attorney support personnel retained by a party or a party’s counsel to  
20 assist in the case, such as outside data entry, photocopying or image scanning  
21 services, computer database creation services, document production services,  
22 and the like, provided that each such person shall execute a copy of the  
23 Certification annexed to this Order as **Exhibit A** (which shall be retained by  
24 counsel);
- 25 f. any authors of “HIPAA/Confidential” documents or information;
- 26 g. the Court, Court personnel, and court reporters and court reporting services  
27 employed in connection with this case;
- 28 h. witnesses who are referenced in the “HIPAA/Confidential” documents or  
information and/or who provided treatment to the patients referenced in the  
“HIPAA/Confidential” documents or information—provided that (1) such  
“HIPAA/Confidential” documents or information shall be provided to the  
witnesses solely for the purpose of taking such witnesses’ deposition, (2)  
such witnesses shall not be allowed to retain copies of any shown  
“HIPAA/Confidential” documents or information shown to them, and (3) each  
such person shall execute a copy of the Certification annexed to this Order as

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26 <sup>1</sup> To the extent disclosure of “HIPAA/Confidential” documents or information may be made to employees, officers,  
27 directors, or other representatives of a party’s direct or indirect parent corporations, then any such individual shall  
28 execute a copy of the Certification annexed to this Order as Exhibit A (which shall be retained by counsel) prior to  
disclosure.

1                   **Exhibit A** (which shall be retained by counsel); and

2                   i. any other person only upon order of the Court or upon stipulation of the  
3                   Parties.

4                   6. Notwithstanding the foregoing, protected health information may be disclosed to  
5                   the person who is the subject of the protected health information to the extent such disclosure is  
6                   required by applicable law. With the exception of disclosure pursuant to ¶ 5(f)-(i) above, each  
7                   person to whom the parties' counsel discloses "HIPAA/Confidential" documents or information  
8                   received pursuant to this Order shall, prior to the time of disclosure, be provided with a written  
9                   notice. The notice shall specify that the documents and information shall not be disclosed except  
10                  as provided herein, that the documents and information are subject to this Order in the United  
11                  States District Court for the District of Nevada, and that a violation of the confidentiality  
12                  provisions may lead to enforcement action, including, but not limited to, any proceeding for civil  
13                  contempt.

14                  7. Plaintiffs' and Defendants' counsel (including their support personnel) shall not  
15                  make copies of "HIPAA/Confidential" documents or information in any form or medium  
16                  (electronic or hard-copy), or provide originals to anybody, except as necessary for purposes of  
17                  this litigation, including appeals. To the extent that counsel for Plaintiffs or Defendants provides  
18                  access to "HIPAA/Confidential" documents or information to any individual or entity, the  
19                  disclosing counsel shall be responsible for ensuring that such individuals or entities comply with  
20                  this Order.

21                  8. Promptly upon the conclusion of this litigation, including appeals, all  
22                  "HIPAA/Confidential" documents or information, including all copies, notes, or other  
23                  transcriptions made therefrom, in any form or medium (including both electronic and hard-copy),  
24                  shall be securely destroyed by the recipient or securely returned by the recipient to the producing  
25                  party. Such destruction shall conform to all relevant regulatory and generally accepted industry  
26                  standards and shall be completed at the cost of the recipient. This paragraph obligates the parties  
27                  only as to "HIPAA/Confidential" documents and information in their respective possession,  
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1 custody, or control.

2 9. All documents containing “HIPAA/Confidential” information that has not been  
3 de-identified to the standards set forth in HIPAA at 45 C.F.R. § 164.514(a)-(c) and that are filed  
4 with the Court shall be filed with a request to seal documents in accordance with District of  
5 Nevada Local Rule 10-5. Upon failure of the filing party to file documents containing such  
6 information under seal in accordance with Local Rule 10-5, any party may request that the Court  
7 place the document under seal.

8 10. Nothing in this Order is intended to prevent authorized government officials, from  
9 having access to “HIPAA/Confidential” documents to which they would have access in the  
10 normal course of their official duties, to the extent such access is permissible under applicable  
11 law.

12 11. A party may designate as “HIPAA/Confidential” documents or discovery  
13 materials produced by a non-party by providing written notice to all parties of the relevant  
14 document numbers or other identification within thirty (30) days after receiving such documents  
15 or discovery materials. Notwithstanding the foregoing, the parties acknowledge and agree that  
16 any patient record (including, but not limited to, any clinical record or payment record) that  
17 contains protected health information shall be deemed “HIPAA/Confidential” information,  
18 without regard to whether such materials are stamped, watermarked, or otherwise designated.

19 12. If a party contends that any document or information is not entitled to confidential  
20 treatment, such party may at any time give written notice to the party or non-party who  
21 designated the material. The party or non-party who designated the material shall have twenty-  
22 five (25) days from the receipt of such written notice to apply to the Court for an order  
23 designating the material as “HIPAA/Confidential.”

24 13. Each party shall implement and maintain reasonable and appropriate  
25 administrative, physical, and technical safeguards to enable compliance with this Order. Such  
26 safeguards shall include, but not be limited to, access controls, audit trails, firewalls, and  
27 encryption of protected health information in transit and at rest. Each party shall maintain  
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1 written policies and procedures governing the implementation of these safeguards. Each party  
2 receiving “HIPAA/Confidential” documents or information pursuant to this Order shall have  
3 conducted commercially reasonable privacy and data security audits and penetration tests at  
4 reasonable intervals on all relevant information technology systems (and have addressed all  
5 material privacy or data security issues raised in any such audits or penetration tests).

6 14. Each party shall comply with all applicable laws with regard to maintaining the  
7 privacy and security of “HIPAA/Confidential” documents and information and notifying affected  
8 individuals of any breaches of such information.

9 15. This Order shall be binding on the parties as of the date it is signed by the parties.  
10 The provisions of this Order shall remain in full force and effect until further order of this Court.

11 16. Even after the final disposition of this case (including appeals), a party or any  
12 other person with standing concerning the subject matter (including without limitation any  
13 individual who is the subject of “HIPAA/Confidential Information” or their personal  
14 representative) may file a motion to seek leave to reopen the case for the limited purpose of  
15 enforcing or modifying the provisions of this Order. The Parties agree that in the event of a  
16 breach of this Order, damages will likely be an insufficient remedy and that in the event of a  
17 breach or an anticipated breach of this Order, a court may enter an injunction to remedy the  
18 breach or anticipated breach of this Order. The parties agree that any such dispute related to or  
19 arising out of this Order shall be under the exclusive jurisdiction of the United States federal  
20 courts and governed by the laws of the United States. The parties agree that before  
21 “HIPAA/Confidential” documents or information may be disclosed to employees, officers,  
22 directors, or other representatives of a party’s direct or indirect parent, the party disclosing the  
23 information will obtain from the parent an agreement that the parent entity *itself* agrees that any  
24 dispute arising out of this Order shall be under the exclusive jurisdiction of the United States  
25 federal courts and governed by the laws of the United States. This will be accomplished in the  
26 following manner:  
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- 1 a. At least thirty (30) days before a party discloses any “HIPAA/Confidential”  
2 documents or information to the employees, officers, directors, or other  
3 representatives of a party’s direct or indirect parent, the party disclosing the  
4 information shall notify the other party of its intent to so disclose the  
5 “HIPAA/Confidential” information or documents to the employees, officers,  
6 directors, or other representatives of a party’s direct or indirect parent;  
7  
8 b. At least ten (10) days before a party discloses any “HIPAA/Confidential”  
9 documents or information to the employees, officers, directors, or other  
10 representatives of a party’s direct or indirect parent, the parent entity or  
11 indirect parent entity receiving the “HIPAA/Confidential” information must  
12 agree to be subject to the Terms of this Order by executing Exhibit A to this  
13 Order, a copy of which must be given to the other party at least ten (10) days  
14 before the party discloses any “HIPAA/Confidential” documents or  
15 information;  
16  
17 c. After receiving notice of a party’s intent to disclose any  
18 “HIPAA/Confidential” documents or information to the employees, officers,  
19 directors, or other representatives of a party’s direct or indirect parent as  
20 described in paragraph 16(a), the other party may object to this disclosure by  
21 filing a motion in a United States federal court seeking an injunction  
22 preventing the disclosure;  
23  
24 d. If a party fails to provide the parent or indirect parent’s consent to this Order  
25 as described in paragraph 16(b), the other party may object to this disclosure  
26 by filing a motion in a United States federal court seeking damages and/or an  
27 injunction preventing the disclosure;  
28  
e. The parties agree that one purpose of this paragraph is to ensure that before  
any foreign nonparty entities are provided “HIPAA/Confidential” documents,  
such foreign nonparty entities have agreed that the jurisdiction and laws of the  
United States apply in handling “HIPAA/Confidential” information.

17. Any party receiving “HIPAA/Confidential” information pursuant to this Order shall indemnify, defend, and hold harmless the party disclosing “HIPAA/Confidential” information against all claims, demands, suits, liabilities, costs, expenses (including attorneys’ fees, breach notification costs, breach investigation costs, and breach remediation costs), damages, and losses suffered or incurred by the disclosing party arising out of (i) the receiving party’s breach of this Order or (ii) the receiving party’s violation of any applicable privacy, information security, or breach notification law with respect to the “HIPAA/Confidential” information. The party receiving “HIPAA/Confidential” information shall bear its own costs in the event that the privacy, security, or confidentiality of any “HIPAA/Confidential” information

1 it received from another party pursuant to this Order is breached. For purposes of this paragraph,  
2 “receiving party” shall be deemed to include the receiving party and its agents, employees,  
3 contractors, representatives, and officers.

4 **C. HANDLING OF CONFIDENTIAL DOCUMENTS AT TRIAL.**

5 18. To the extent any party seeks to use documents containing any  
6 “HIPAA/Confidential” information as exhibits at trial, the parties shall redact the documents to  
7 contain the minimum amount of protected health information needed to achieve the intended  
8 purpose and shall meet and confer in an attempt to obtain agreement regarding the handling of  
9 such materials during trial, and either party may petition the Court for a resolution of this matter  
10 pursuant to the scheduling order or any other Court order then in effect. Neither party shall be  
11 permitted to use documents containing “HIPAA/Confidential” information as exhibits at trial if  
12 versions of such documents that have been redacted to the extent that would satisfy the de-  
13 identification standard set forth in 45 C.F.R. § 164.514(a)-(c) would reasonably suffice for the  
14 intended purpose.



1 DATED this 12th day of April, 2021.

2 CHASNOFF MUNGIA VALKENAAR  
3 PEPPING & STRIBLING, LLP

AKIN GUMP STRAUSS HAUER &  
FELD, LLP

4 By: /s/ Barry A. Chasnoff

By: /s/ Shawn Hanson

5 Barry A. Chasnoff  
6 1020 NE Loop 410, Suite 150  
7 San Antonio, Texas 78209  
Telephone: (210) 469-4155  
bchnsnoff@chnsnoffstribling.com

Shawn Hanson  
580 California Street, Suite 1500  
San Francisco, CA 94104  
Telephone: (415) 765-9500  
shanson@akingump.com

8 CLARK HILL PLLC  
9 Nicholas M. Wiczorek  
10 3800 Howard Hughes Parkway,  
Suite 500  
11 Las Vegas, Nevada 89169  
Telephone: (702) 862-8300  
12 nwniczorek@clarkhill.com

MARQUIS AURBACH COFFING  
Craig R. Anderson  
10001 Park Run Drive  
Las Vegas, NV 89145  
Telephone: (702) 382-0711  
canderson@maclaw.com

13 *Attorneys for Certain Underwriters*  
14 *at Lloyd's London Subscribing to*  
*Policy No. HAH15-0632*

*Counsel for Plaintiffs My Left Foot*  
*Children's Therapy, LLC, Jon*  
*Gottlieb, and Ann Marie Gottlieb*

16 IT IS SO ORDERED:

17 

18 UNITED STATES MAGISTRATE JUDGE

19 DATED: 4-13-2021

**EXHIBIT A**

**CERTIFICATION**

I hereby certify my understanding that HIPAA/Confidential information is being provided to me pursuant to the terms and restrictions of the Stipulated HIPAA Qualified Protective Order dated \_\_\_\_\_, 2021 in *My Left Foot Children's Therapy, LLC et al v. Certain Underwriter's at Lloyd's London Subscribing to Policy No. 6032*, United States District Court Case No. 2:15-cv-01746. I have been given a copy of the Order and have read it. I agree to be bound by the Order. I will not reveal the HIPAA/Confidential information to anyone, except as allowed by the Order. I will maintain all such HIPAA/Confidential information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it or unauthorized disclosure. I will not use the HIPAA/Confidential information for any purpose unrelated to the purpose for which it was provided to me. No later than thirty (30) days after the conclusion of this action, I will securely return the HIPAA/Confidential information – including copies, notes or other transcriptions made therefrom – to the counsel who provided me with them; or, in the alternative, I will securely destroy them, as may be directed by said counsel, retaining no electronic or hard-copy versions of the HIPAA/Confidential information in any form or medium. I hereby agree that any dispute related to or arising out of this Order shall be under the exclusive jurisdiction of the United States federal courts and governed by the laws of the United States. I hereby consent to the jurisdiction of the United States District Court for the purpose of enforcing the Order.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_