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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MEDCHOICE RISK RETENTION GROUP,
INC.

Plaintiff,

v.

ROBERT G. RAND, M.D., and RAND FAMILY
CARE LLC

Defendant.

Case No. 3:16-cv-00418-MMD-VPC

**STIPULATED MOTION FOR
PROTECTIVE ORDER**

Pursuant to Federal Rule of Civil Procedure 26, Plaintiff MedChoice Risk Retention Group, Inc. ("MedChoice"), and Defendants Robert G. Rand, M.D. and Rand Family Care LLC (collectively "Rand") (collectively, MedChoice and Rand are referred to herein as the

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1 “Parties”; individually each may be referred to as a “Party”) deem it appropriate to limit the
2 disclosure of certain confidential information, as set forth below, and MedChoice and Rand, by
3 counsel, have stipulated and agreed to give effect to the stipulations set forth below.

4 IT IS HEREBY ORDERED THAT:

5 1. **Purposes and Limitations.** Disclosure and discovery activity in this Action is
6 likely to involve production of confidential, proprietary, or private information for which
7 special protection is warranted from:

8 (a) public disclosure;

9 (b) disclosure to the “Underlying Plaintiffs” (and their counsel) in the
10 “Underlying Actions:”

11 *Cyndi Papez Yenick et al. v. Robert Rand, M.D., et al.*, Washoe County
12 District Court Case No. CV-16-01004 (the “Yenick Lawsuit”); and/or

13 *Eric Zuhlke et al. v. Robert Rand, M.D., et al.*, Washoe County District
14 Court Case No. CV16-01641 (the “Zuhlke Lawsuit”) and/or

15 *Don Robertson, II, et al. v. Robert Rand, M.D.; Rand Family Care*,
16 Washoe County District Court, Case No. CV17-0099 (the “Fribourg
17 Lawsuit”)

18 (collectively, the Yenick Lawsuit, the Zuhlke Lawsuit, and the Fribourg Lawsuit are referred to
19 herein as the “Underlying Actions”; each of the Plaintiffs in the Underlying Actions may be
20 referred to as “Underlying Plaintiffs”); and

21 (c) use for any purpose other than this litigation.

22 The Parties therefore stipulate to and request entry of this Protective Order (the
23 “Order”) by the Court. The Parties acknowledge that this Order does not confer blanket
24 protections on all disclosures or responses to discovery and that the protection it affords
25 extends only to the limited information or items that are entitled under the applicable legal
26 principles to treatment as confidential. The Parties further acknowledge that this Order does
not allow any Party to file anything under seal. The applicable rules, including Federal Rule of
Civil Procedure 5.2 and LR IA 10-5 set forth the procedures that must be followed and reflect

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1 the standards and procedures that will be applied when a Party seeks leave to file material
2 under seal.

3 2. **Discovery Material.** Documents, discovery responses, including interrogatory
4 responses, responses to requests for admission, etc., deposition testimony, photographs,
5 videotapes, data and other materials, or portions thereof, produced in discovery in this Action
6 by any of the Parties (the "Producing Party") may be designated as "Confidential" if the
7 Producing Party reasonably and in good faith believes they contain confidential commercial,
8 personal, financial, or proprietary information, medical records, or other confidential
9 information not already part of the public domain, including all material, data, and information
10 obtained, derived, or generated from such materials. Confidential Information shall include,
11 but not be limited to:

12 (a) any claim investigation materials related to the Underlying Actions; and
13 (b) all materials protected by the joint attorney-client privilege and/or work
14 product doctrine applicable to the Parties and created or derived from the defense of the
15 Underlying Actions.

16 Such information shall be deemed "Confidential Information" and shall be subject to
17 the provisions of this Order. The Party requesting the material shall be responsible for
18 safeguarding all produced materials and information designated Confidential Information.

19 3. **Designation by Producing Party.** The designation of Confidential
20 Information described in paragraph 2 above shall be made by stamping or labeling the
21 document or portions thereof containing Confidential Information with the legend
22 "CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER" prior to its production or, if
23 inadvertently produced without a legend, by furnishing written notice of the inadvertent
24 production specifically identifying documents which should have contained the legend.
25 Confidential Information may also be designated in answers to interrogatories and responses to
26 requests for admissions containing Confidential Information by including the words

1 "CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER" in the specific answers to
2 interrogatories or responses to requests for admissions containing Confidential Information.

3 4. **Depositions.** Information identified as "Confidential" in accordance with this
4 Order may be disclosed in deposition testimony, subject to the following:

5 Prior to disclosing such information at a deposition, counsel will note on the record that
6 responses to a particular questions or series of questions contain or may contain Confidential
7 Information and request the reporter to mark the first page of the deposition transcript as
8 "Containing Confidential Information." Parties may also designate portions of the transcript as
9 "Confidential" within twenty (20) days of receipt of the transcript by giving written
10 notification to the opposing Party and the court reporter. Only those portions of the transcript
11 designated as "Confidential" shall be considered Confidential Information. Until expiration of
12 the 20-day period, the entire deposition will be treated as Confidential under this Order.

13 5. **Authorized and Unauthorized Uses of Confidential Information.** Materials
14 marked "Confidential" by the Producing Party, and the information contained therein, shall be
15 kept confidential, shall not be used, directly or indirectly, by any Party for any business,
16 commercial or competitive purpose, or for any purpose other than the preparation and trial,
17 including pre-trial motion practice and discovery, of this Action in accordance with the
18 provisions of this Order without the express written consent of counsel for the Producing Party
19 or by order of the Court. Access to and disclosure of Confidential Information shall be limited
20 to those persons designated as Qualified Persons in paragraph 6 below. To avoid security risks
21 currently inherent in certain current technologies and to facilitate compliance with the terms of
22 this Order, and unless the Party whose Confidential Information is at issue agrees otherwise in
23 writing, all Qualified Persons given access to Confidential Information as outlined in
24 paragraph 6 below, shall keep all such information confidential from all other persons except
25 as specifically provided in this Order.
26

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1 6. **Qualified Persons.** Confidential Information may be disclosed only to the
2 following persons ("Qualified Persons"):

3 a. Parties, and personnel who work for Parties, and Parties' counsel and
4 the clerical, technical, paralegal, and secretarial staff employed or retained by such counsel and
5 the Parties' insurers, reinsurers, and retrocessionaires, if any, who need to review such
6 information in connection with this Action;

7 b. A Party's Experts and consultants whose assistance is necessary to assist
8 the Parties' counsel of record in the preparation of the case, or to testify in this Action provided
9 any such persons follow the procedure described in paragraph 7 below;

10 c. A Party's deponent or a witness at trial or hearing in this Action,
11 provided there is a reasonable basis to believe the disclosure is necessary to prepare the
12 witness or that the witness will give relevant testimony regarding the Confidential Information;

13 d. The Court or any Court personnel, including court reporters;

14 e. A person identified in the document as a subject of the communication,
15 or having authored or previously received the document; and

16 f. Any person mutually agreed upon among the Parties.

17 g. The Parties agree that none of the Underlying Plaintiffs nor their
18 counsel, experts or consultants, or witnesses shall be Qualified Persons with regard to the
19 information identified in 2(b) above. The Confidential Information identified in 2(b) above is
20 specifically not to be disclosed to the Underlying Plaintiffs, their counsel, or any person acting
21 on their behalf.

22 7. **Qualified Persons Bound by Order.** Before being given access to any
23 Confidential Information, each Qualified Person, other than the persons identified in Paragraph
24 6(a) or those witnesses who are shown Confidential Information at a trial, deposition, or
25 hearing as identified in paragraph 6(c) and persons identified in paragraph 6(d), shall be
26 advised of the terms of this Order, shall be given a copy of this Order, and shall agree in

1 writing to be bound by the terms of this Order. Counsel for each Party shall maintain a list of
2 all Qualified Persons to whom they or their client(s) have provided any Confidential
3 Information, which list shall be available for inspection by the Court.

4 8. **Non-Disclosure to Competitors.** In no event shall any disclosure of
5 Confidential Information be made to any competitor of MedChoice or to any person who, upon
6 reasonable and good faith inquiry, could be determined to be an employee or consultant of any
7 competitor of MedChoice, irrespective of whether they are retained as a consultant or expert
8 by Rand in this Action.

9 9. **Filing Confidential Information.** Without written permission from the
10 Producing Party or a court order, Confidential Information may not be filed in the public
11 record, but may be filed under seal. Any Confidential Information that is filed must be filed
12 under seal. A Party that seeks to file anything under seal must comply with applicable rules
13 and orders concerning filings under seal, including Federal Rule of Civil Procedure 5.2 and LR
14 IA 10-5. Confidential Information may only be filed under seal pursuant to a court order
15 authorizing the sealing of the specific Confidential Information at issue. A sealing order may
16 issue only upon a request that establishes that the document, or portions thereof, is privileged
17 or otherwise entitled to protection under the law. If a request to file under seal pursuant to
18 Federal Rule of Civil Procedure 5.2 and LR IA 10-5 is denied, the submitting party may file
19 the information in the public record, unless otherwise instructed by the court.

20 10. **Use of Confidential Information at Trial.** Information identified as
21 "Confidential" in accordance with this Order may be disclosed in testimony at the trial of this
22 Action or in other proceedings in this matter subject to the procedures identified above
23 concerning filing confidential information and deposition testimony.

24 11. **Inadvertent Failure to Designate as Confidential Information.** Inadvertent
25 failure to designate documents or information as Confidential Information shall not constitute a
26 waiver of the Producing Party's claim to confidentiality, provided that the Producing Party

1 shall promptly notify the receiving Party in writing within ten (10) business days of such
2 discovery. Upon receipt of such notice, each receiving Party shall treat the material identified
3 in the notice as Confidential Information, consistent with the terms of this Order. Each
4 receiving Party shall further notify every person or organization that received copies of or
5 access to the material identified in the notice that such material contains Confidential
6 Information, as defined by this Order. Disclosure of material to other persons and
7 organizations prior to receipt of notice from the Producing Party is not a violation of this
8 Order.

9 12. **No Waiver of Privilege.** This Order does not affect or constitute a waiver of
10 any Party's right to withhold or redact information protected from disclosure by the attorney-
11 client privilege, work product doctrine, or other applicable legal privilege. Inadvertent
12 production of confidential documents subject to the attorney-client privilege, the work-product
13 doctrine, or other legal privilege protecting information from discovery shall not constitute a
14 waiver of the immunity or privilege. The Party discovering the inadvertent production shall
15 promptly notify the receiving Party in writing when it becomes aware of such inadvertent
16 production. Within five (5) business days of receiving such notice, such inadvertently
17 produced documents and all copies thereof, as well as all notes or other work product
18 reflecting the contents of such materials, shall be returned to the Producing Party or destroyed,
19 upon request, and such returned or destroyed material shall be deleted from any litigation-
20 support or other database. No use shall be made of such documents during deposition or at
21 trial, nor shall they be shown to anyone who was not given access to them prior to the request
22 to return or destroy them, unless otherwise permitted by the Court.

23 a. No less than twenty (20) business days after providing notification of
24 inadvertently disclosed information, the Producing Party shall produce a privilege log listing
25 such information.
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1 b. The receiving Party may move the Court for an Order compelling
2 production of the inadvertently disclosed information. Such motion shall be filed under seal
3 and shall not assert as a ground for entering such an Order the fact or circumstances of the
4 inadvertent production. On any such motion, the Producing Party shall retain the burden of
5 establishing its privilege or work product claims. Nothing in this paragraph shall limit the
6 right of any Party to petition the Court for an *in camera* review of the inadvertently disclosed
7 information.

8 13. **Order Survives Termination of Actions.** This Order shall remain in full force
9 and effect and survive the entry of any other Order resulting in termination of this Action,
10 unless this Order is expressly modified or vacated by the Court, with all Parties having had
11 notice and an opportunity to be heard.

12 14. **Disposition of Confidential Information.** Within sixty (60) days after the
13 final conclusion of this Action, and to the extent permitted by law, the Parties and/or their
14 counsel shall either return or destroy all materials designated as Confidential Information,
15 including copies, extracts, and summaries thereof. This provision does not apply to (1) copies
16 of any pleadings or other papers that have been filed with the Court; (2) any work product
17 deemed "Confidential"; or (3) any documents designated "Confidential" with respect to which
18 confidentiality has been successfully challenged in accordance with paragraph 16, below.
19 Notwithstanding the foregoing, any insurance company Party or person may retain all
20 Confidential Information received and all pleadings, briefs, memoranda, motions, and other
21 documents containing work product which refer to or incorporate Confidential Information for
22 so long as is necessary to comply with applicable regulatory record retention requirements, and
23 will continue to be bound by the terms of this Protective Order with respect to all such retained
24 Information.

25 15. **Court Retains Jurisdiction.** The Court shall retain jurisdiction over all
26 persons or organizations authorized under paragraph 6 to receive Confidential Information for

1 the limited purpose of enforcing such return and enforcing the continuing obligations of
2 confidentiality imposed by this Order.

3 16. **Challenges to Confidentiality Designation.** If a Party disagrees with the
4 designation of materials or information as “Confidential,” the Party challenging the
5 designation and the Producing Party shall first try in good faith to informally resolve the
6 dispute. The Party challenging the designation shall provide specific reasons as to why the
7 materials or information are not properly designated as “Confidential.” If it becomes
8 necessary for the Court to resolve the dispute, the Party challenging the designation shall file
9 the appropriate motion no more than thirty (30) days after the Parties’ informal attempts to
10 resolve the issue have failed. Pending the Court’s decision on the motion, the information
11 designated as “Confidential” shall be treated as though it were Confidential Information within
12 the meaning of this Order. If the objecting Party does not file such a motion within thirty (30)
13 days of the service of its objection(s) and the Producing Party has not agreed to extend the time
14 for filing such a motion, the information designated as “Confidential” shall be treated as
15 Confidential Information within the meaning of this Order. With respect to any motions
16 relating to the confidentiality of documents or related information, the burden of justifying the
17 designation shall lie with the Producing Party. All Parties retain the right to appeal the
18 decision of the Court.

19 17. **Subpoena by Other Courts or Agencies.** If a Party (or its agent, officer,
20 employee, representative, or attorney) receives a discovery request, subpoena, or other process
21 seeking disclosure of Confidential Information, the Party shall immediately notify, via
22 overnight mail and email, the Party, person, or entity who has designated the requested
23 information or documents as “Confidential” that such a request has been made and shall
24 provide that Party with an opportunity to file a motion for protective order or take other
25 appropriate action prior to producing the requested information or documents.

1 18. **Modification Permitted.** Nothing contained in this Order shall prejudice the
2 right of any Party to seek modification or amendment of this Order by further Court order,
3 upon motion and notice.

4 **IT IS SO ORDERED.**

5 DATED _____, 2017. _____

6
7 Through the undersigned counsel, the Parties consent to the entry of this Order.

8 DATED: 11/27/2017

9 COZEN O'CONNOR

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11 Shauna Martin Ehlert
12 *Admitted Pro Hac Vice*
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Attorneys for Plaintiff

1 DATED: 11/22/17

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Attorney for Defendants

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12 IT IS SO ORDERED
Valerie P. Poole
U.S. MAGISTRATE JUDGE

13 DATED: November 30, 2017

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STIPULATED MOTION FOR PROTECTIVE ORDER