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5	UNITED STATES DISTRICT COURT		
6	EASTERN DISTRICT OF WASHINGTON		
7	TERESA PFAFFLE,		
8	Plaintiff,	NO: 2:17-CV-0407-TOR	
9	v.	ORDER GRANTING QUALIFIED PROTECTIVE ORDER	
10	BNSF RAILWAY COMPANY,	RE: JOHN F. FLOYD, M.D.	
11	Defendant.		
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13	BEFORE THE COURT is the parties' Joint Motion for a Qualified Protective		
14	Order with respect to the deposition of Dr. John F. Floyd. ECF No. 49. The motion		
15	was submitted for consideration without oral argument. The Court has reviewed the		
16	briefing and the record and files herein and is fully informed.		
17	Pursuant to 45 C.F.R. § 164.512(e) a party seeking protected health		
18	information for use in litigation is required to comply with the provisions of the		
19	regulation concerning notice and opportunity for objection on the part of the person		
20	whose protected health information is being sought.		

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In this instance, BNSF sought the deposition of Dr. John Floyd, a treating
healthcare provider for Ms. Teresa Pfaffle, the plaintiff in this action. Mr. Stephen
Lamberson, acting as counsel for Dr. Floyd, provided notice to BNSF that he
believed the provisions of 45 C.F.R. § 164.512(e) had not been met and the
deposition of Dr. Floyd could not proceed until such requirements were satisfied by
BNSF.

7 BNSF responded to Mr. Lamberson as to the provisions of 45 C.F.R. § 8 164.512(e) and argued it had, in fact complied with the provisions of the regulation 9 by notice of Dr. Floyd's deposition being served upon counsel for Ms. Pfaffle and the expiration of 42 days without objection being lodged or relief being sought from 10 11 the Court. However, BNSF also indicated it would strike the deposition of Dr. Floyd 12 and submit a motion to obtain a qualified protective order and ensure the requirements of 45 C.F.R. § 164.512(e) were satisfied so as to avoid further 13 controversy. In this regard, the Court makes no finding as to whether BNSF did, or 14 did not, comply with 45 C.F.R. §164.512(e). 15

16 Counsel for BNSF and for Ms. Pfaffle submitted a joint motion for issuance17 of a qualified protective order.

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## ACCORDINGLY, IT IS HEREBY ORDERED:

2 1. The parties' Joint Motion for a Qualified Protective Order (ECF No.
3 49) is GRANTED.

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2. Dr. John F. Floyd shall appear at a deposition as mutually scheduled
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between the parties, Dr. Floyd and counsel for Dr. Floyd.

3. BNSF is restricted in the use of the protected health information to the
pending litigation and dissemination of the protected health information only to
those necessary for BNSF to present its defense.

9 4. BNSF shall destroy all copies of the protected health information
10 following conclusion of the above-captioned litigation and the expiration of any
11 applicable time period for appeal.

The District Court Executive is hereby directed to enter this Order and furnish copies to all counsel.

DATED this July 26, 2019.



Homas O. Rice

Chief United States District Judge

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