

1 In this instance, BNSF sought the deposition of Dr. John Floyd, a treating
2 healthcare provider for Ms. Teresa Pfaffle, the plaintiff in this action. Mr. Stephen
3 Lamberson, acting as counsel for Dr. Floyd, provided notice to BNSF that he
4 believed the provisions of 45 C.F.R. § 164.512(e) had not been met and the
5 deposition of Dr. Floyd could not proceed until such requirements were satisfied by
6 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
10 the expiration of 42 days without objection being lodged or relief being sought from
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
13 requirements of 45 C.F.R. § 164.512(e) were satisfied so as to avoid further
14 controversy. In this regard, the Court makes no finding as to whether BNSF did, or
15 did not, comply with 45 C.F.R. §164.512(e).

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

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1 ACCORDINGLY, IT IS HEREBY ORDERED:

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

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

6 3. BNSF is restricted in the use of the protected health information to the
7 pending litigation and dissemination of the protected health information only to
8 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.

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

14 DATED this July 26, 2019.



Thomas O. Rice

THOMAS O. RICE

Chief United States District Judge

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