

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 22, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALAN D. ROBERTSON,

Plaintiff,

v.

LORNE A. DORN; and KIM DORN,

Defendants.

No. 2:21-CV-00064-SAB

**ORDER GRANTING
STIPULATED MOTION FOR
PROTECTIVE ORDER**

Before the Court is the parties' Stipulated Protective Order Re: Nonparty Providence Sacred Heart Medical Center, ECF No. 136. Plaintiff is represented by David Beninger; Mark Kamitomo; Patricia Anderson; and George Ahrend. Defendants are represented by Patricia Buchanan; Megan Starks; and Sara Sutton. Providence Sacred Heart Medical Center is represented by Andrew Wagley and Stephen Lamberson.

Pursuant to the Court's previous Order, ECF No. 132, the parties have submitted their stipulated proposed protective order for the information sought from Providence Sacred Heart Medical Center. The Court finds good cause to grant the motion.

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**ORDER GRANTING STIPULATED MOTION FOR PROTECTIVE
ORDER # 1**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The parties' Stipulated Protective Order Re: Nonparty Providence
3 Sacred Heart Medical Center, ECF No. 136, is **GRANTED**.

4 2. The Court enters the following into the record:

5 **Stipulated Protective Order**

6 1. PURPOSES AND LIMITATIONS

7 After the Court in the above-entitled case denied protection from discovery
8 but granted a protective order on dissemination based on allegations that certain
9 information sought from Nonparty Providence Sacred Heart Medical Center
10 ("Nonparty PSHMC") through the Amended Subpoena served on or about January
11 28, 2022 and March 9, 2022 may include protected confidential commercial
12 information. As a result of that Order, Plaintiff, Defendants, and Nonparty PSHMC
13 hereby submit to and petition the Court to enter the following Stipulated Protective
14 Order in the form adopted in this Circuit. The parties acknowledge that this
15 agreement is consistent with the order in this case and LCR 26(c). It does not
16 confer blanket protection on all disclosures or responses to discovery, the
17 protection it affords from public disclosure and use extends only to the limited
18 information or items that the Court determined are entitled to confidential
19 treatment under the applicable legal principles, and it does not presumptively
20 entitle parties to file confidential information under seal.

21 2. "CONFIDENTIAL" MATERIAL

22 "Confidential" material shall include certain information, documents, and
23 testimony designated as such in accordance with the Court's Order and obtained
24 from Nonparty PSHMC.

25 3. SCOPE

26 The protections conferred by this agreement cover not only confidential
27 material (as defined above), but also (1) any information copied or extracted from
28 confidential material; (2) all copies, excerpts, summaries, or compilations of

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ORDER # 2**

1 confidential material; and (3) any testimony, conversations, or presentations by
2 parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover
4 information that is in the public domain or becomes part of the public domain
5 through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential material that
8 is disclosed or produced by another party or by a non-party in connection with this
9 case only for prosecuting, defending, or attempting to settle this litigation.

10 Confidential material may be disclosed only to the categories of persons and under
11 the conditions described in this agreement. Confidential material must be stored
12 and maintained by a receiving party at a location and in a secure manner that
13 ensures that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the designating party, a
16 receiving party may disclose any confidential material only to:

17 (a) the receiving party's counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the
19 information for this litigation;

20 (b) the officers, directors, and employees (including in house
21 counsel) of the receiving party to whom disclosure is reasonably necessary
22 for this litigation, unless the parties agree that a particular document or
23 material produced is for Attorney's Eyes Only and is so designated;

24 (c) experts and consultants to whom disclosure is reasonably
25 necessary for this litigation and who have signed the "Acknowledgment and
26 Agreement to Be Bound" (Exhibit A);

27 (d) the court, court personnel, and court reporters and their staff;

28 (e) copy or imaging services retained by counsel to assist in the

1 duplication of confidential material, provided that counsel for the party
2 retaining the copy or imaging service instructs the service not to disclose any
3 confidential material to third parties and to immediately return all originals
4 and copies of any confidential material;

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who acknowledged they will treat
7 Confidential material as confidential consistent with this Protective Order,
8 and subsequently sign the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the designating party or ordered by
10 the court. Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal confidential material must be separately bound by the
12 court reporter and may not be disclosed to anyone except as permitted under
13 this agreement;

14 (g) the author or recipient of a document containing the
15 information or a custodian or other person who otherwise possessed the
16 information.

17 4.3 Filing Confidential Material. Before filing confidential material or
18 discussing or referencing such material in court filings, the filing party shall confer
19 with the designating party to determine whether the designating party will remove
20 the confidential designation, whether the document can be redacted, or whether a
21 motion to seal or stipulation and proposed order is warranted. During the meet and
22 confer process, the designating party must identify the basis for sealing the specific
23 confidential information at issue, and the filing party shall include this basis in its
24 motion to seal, along with any objection to sealing the information at issue. A party
25 who seeks to maintain the confidentiality of its information must satisfy the
26 requirements of the applicable law even if it is not the party filing the motion to
27 seal. Failure to satisfy this requirement will result in the motion to seal being
28 denied, in accordance with the presumption of public access to the Court’s files.

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ORDER # 4**

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each party or non-party that designates information or items for protection
4 under this agreement must take care to limit any such designation to specific
5 material that qualifies under the appropriate standards. The designating party must
6 designate for protection only those parts of material, documents, items, or oral or
7 written communications that qualify, so that other portions of the material,
8 documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or delay the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it
16 designated for protection do not qualify for protection, the designating party must
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as
20 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
21 protection under this agreement must be clearly so designated before or when the
22 material is disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic
24 documents and deposition exhibits, but excluding transcripts of depositions
25 or other pretrial or trial proceedings), the designating party must affix the
26 word "CONFIDENTIAL" to each page that contains confidential material. If
27 only a portion or portions of the material on a page qualifies for protection,
28 the producing party also must clearly identify the protected portion(s) (*e.g.*,

1 by making appropriate markings in the margins).

2 (b) Testimony given in deposition or in other pretrial proceedings:
3 the parties and any participating non-parties must identify on the record,
4 during the deposition or other pretrial proceeding, all protected testimony,
5 without prejudice to their right to so designate other testimony after
6 reviewing the transcript. Any party or non-party may, within fifteen days
7 after receiving the transcript of the deposition or other pretrial proceeding,
8 designate portions of the transcript, or exhibits thereto, as confidential. If a
9 party or non-party desires to protect confidential information at trial, the
10 issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a
12 prominent place on the exterior of the container or containers in which the
13 information or item is stored the word “CONFIDENTIAL.” If only a portion
14 or portions of the information or item warrant protection, the producing
15 party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive
18 the designating party’s right to secure protection under this agreement for such
19 material. Upon timely correction of a designation, the receiving party must make
20 reasonable efforts to ensure that the material is treated in accordance with the
21 provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a
24 designation of confidentiality at any time. Unless a prompt challenge to a
25 designating party’s confidentiality designation is necessary to avoid foreseeable,
26 substantial unfairness, unnecessary economic burdens, or a significant disruption
27 or delay of the litigation, a party does not waive its right to challenge a
28 confidentiality designation by electing not to mount a challenge promptly after the

1 original designation is disclosed.

2 6.2 Meet and Confer. The parties must make every attempt to resolve any
3 dispute regarding confidential designations without court involvement. Any motion
4 regarding confidential designations or for a protective order must include a
5 certification, in the motion or in a declaration or affidavit, that the movant has
6 engaged in a good faith meet and confer conference with other affected parties in
7 an effort to resolve the dispute without court action. The certification must list the
8 date, manner, and participants to the conference. A good faith effort to confer
9 requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
11 court intervention, the designating party may file and serve a motion to retain
12 confidentiality pursuant to the applicable law. The burden of persuasion in any
13 such motion shall be on the designating party. Frivolous challenges, and those
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
15 burdens on other parties) may expose the challenging party to sanctions. All parties
16 shall continue to maintain the material in question as confidential until the court
17 rules on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
19 IN OTHER LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that party must:

23 (a) promptly notify the designating party in writing and include a
24 copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena
26 or order to issue in the other litigation that some or all of the material
27 covered by the subpoena or order is subject to this agreement. Such
28 notification shall include a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the designating party whose confidential material may be
3 affected.

4 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
6 confidential material to any person or in any circumstance not authorized under
7 this agreement, the receiving party must immediately (a) notify in writing the
8 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
9 all unauthorized copies of the protected material, (c) inform the person or persons
10 to whom unauthorized disclosures were made of all the terms of this agreement,
11 and (d) request that such person or persons execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a producing party gives notice to receiving parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the receiving parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order or agreement that
20 provides for production without prior privilege review. The parties agree to the
21 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals,
24 each receiving party must return all confidential material to the producing party,
25 including all copies, extracts and summaries thereof. Alternatively, the parties may
26 agree upon appropriate methods of destruction.

27 Notwithstanding this provision, counsel are entitled to retain one archival
28 copy of the file, even if such materials contain confidential material.

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1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.

4 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
5 Order and provide copies to counsel.

6 **DATED** this 22nd day of March 2022.



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11 Stanley A. Bastian
12 Chief United States District Judge
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