

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

Nov 21, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CORNELIUS HEALY, individually,

No. 2:24-CV-00322-MKD

Plaintiff,

ORDER GRANTING PROPOSED
PROTECTIVE ORDER

v.

ECF No. 9

ELEVANCE HEALTH COMPANIES,
INC., (f/k/a Anthem, Inc.) a Foreign
Profit Corporation,

Defendant.

The parties have submitted a Proposed Protective Order to the Court. ECF No. 9. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order to protect certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Proposed Protective Order, **ECF No. 9**, is **GRANTED**.

1 **PROTECTIVE ORDER**

2 1. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection may be warranted.

5 Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. This agreement does not confer blanket
7 protection on all disclosures or responses to discovery. The protection it affords
8 from public disclosure and use extends only to the limited information or items that
9 are entitled to confidential treatment under the applicable legal principles, and it
10 does not presumptively entitle parties to file confidential information under seal.

11 2. “CONFIDENTIAL” MATERIAL

12 “Confidential” material shall include the following documents and tangible
13 things produced or otherwise exchanged that implicates common law and statutory
14 privacy and/or confidentiality interests, such as: medical records, personnel records
15 of current or former employees of Defendant, non-public personal information
16 such as banking information and social security numbers, and trade secrets and
17 commercial or financial information that is either privileged or confidential.

18 3. SCOPE

19 The protections conferred by this agreement cover not only confidential
20 material (as defined above), but also (1) any information copied or extracted from

1 confidential material; (2) all copies, excerpts, summaries, or compilations of
2 confidential material; and (3) any testimony, conversations, or presentations by
3 parties or their counsel that might reveal confidential material.

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

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

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

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

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

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

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

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

9 (e) copy or imaging services retained by counsel to assist in the
10 duplication of confidential material, provided that counsel for the party
11 retaining the copy or imaging service instructs the service not to disclose any
12 confidential material to third parties and to immediately return all originals
13 and copies of any confidential material;

14 (f) during their depositions, witnesses in the action to whom
15 disclosure is reasonably necessary and who have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
17 otherwise agreed by the designating party or ordered by the court. Pages of
18 transcribed deposition testimony or exhibits to depositions that reveal
19 confidential material must be separately bound by the court reporter and may
20 not be disclosed to anyone except as permitted under this agreement;

1 (g) the author or recipient of a document containing the
2 information or a custodian or other person who otherwise possessed or knew
3 the information.

4 4.3 Filing Confidential Material. Before filing confidential material or
5 discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party to determine whether the designating party will remove
7 the confidential designation, whether the document can be redacted, or whether a
8 motion to seal or stipulation and proposed order is warranted. During the meet and
9 confer process, the designating party must identify the basis for sealing the specific
10 confidential information at issue, and the filing party shall include this basis in its
11 motion to seal, along with any objection to sealing the information at issue.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each party or non-party that designates information or items for protection under
15 this agreement must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The designating party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify, so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this agreement.

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

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this agreement (*see, e.g.*, second paragraph of section 5.2(b) below), or as
11 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
12 protection under this agreement must be clearly so designated before or when the
13 material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic
15 documents and deposition exhibits, but excluding transcripts of depositions
16 or other pretrial or trial proceedings), the designating party must affix the
17 word "CONFIDENTIAL" to each page that contains confidential material. If
18 only a portion or portions of the material on a page qualifies for protection,
19 the producing party also must clearly identify the protected portion(s) (e.g.,
20 by making appropriate markings in the margins).

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

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

1 provisions of this agreement.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any party or non-party may challenge a
4 designation of confidentiality at any time. Unless a prompt challenge to a
5 designating party's confidentiality designation is necessary to avoid foreseeable,
6 substantial unfairness, unnecessary economic burdens, or a significant disruption
7 or delay of the litigation, a party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any
11 dispute regarding confidential designations without court involvement. Any
12 motion regarding confidential designations or for a protective order must include a
13 certification, in the motion or in a declaration or affidavit, that the movant has
14 engaged in a good faith meet and confer conference with other affected parties in
15 an effort to resolve the dispute without court action. The certification must list the
16 date, manner, and participants to the conference. A good faith effort to confer
17 requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
19 court intervention, the designating party may file and serve a motion to retain
20 confidentiality. The burden of persuasion in any such motion shall be on the

1 designating party. Frivolous challenges, and those made for an improper purpose
2 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
3 expose the challenging party to sanctions. All parties shall continue to maintain
4 the material in question as confidential until the court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
6 IN OTHER LITIGATION

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

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

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

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

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 confidential material to any person or in any circumstance not authorized under

1 this agreement, the receiving party must immediately (a) notify in writing the
2 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
3 all unauthorized copies of the protected material, (c) inform the person or persons
4 to whom unauthorized disclosures were made of all the terms of this agreement,
5 and (d) request that such person or persons execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

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

16 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

1 Notwithstanding this provision, counsel is entitled to retain one archival
2 copy of all documents produced in discovery, documents filed with the court, trial,
3 deposition, and hearing transcripts, correspondence, deposition and trial exhibits,
4 expert reports, attorney work product, and consultant and expert work product,
5 even if such materials contain confidential material.

6 The confidentiality obligations imposed by this agreement shall remain in
7 effect until a designating party agrees otherwise in writing or a court orders
8 otherwise.

9 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the
10 production of any documents, electronically stored information (ESI) or
11 information, whether inadvertent or otherwise, in this proceeding shall not, for the
12 purposes of this proceeding or any other federal or state proceeding, constitute a
13 waiver by the producing party of any privilege applicable to those documents,
14 including the attorney-client privilege, attorney work-product protection, or any
15 other privilege or protection recognized by law. This Order shall be interpreted to
16 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
17 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
18 shall serve to limit a party's right to conduct a review of documents, ESI or
19 information (including metadata) for relevance, responsiveness and/or segregation
20 of privileged and/or protected information before production. Information

1 produced in discovery that is protected as privileged or work product shall be
2 immediately returned to the producing party.

3 **IT IS SO ORDERED.** The District Court Executive is directed to file this
4 order and provide copies to the parties.

5 DATED November 21, 2024.

6 s/Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of

4 _____ [print or type full address], declare

5 under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Eastern District of Washington on November 21, 2024, in the case of *Healy v.*
8 *The Elevance Health Companies, Inc.*, Case No. 2:24-cv-00322. I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Eastern District of Washington for the purpose of enforcing the terms
17 of this Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action.

19 Date: _____

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SIGNATURE

PRINTED NAME

CITY AND STATE WHERE SWORN/SIGNED