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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JANINE HOUCK,

Plaintiff,

v.

THE ENSIGN GROUP, INC., a Delaware Corporation; URGENT CARE EMPLOYER SOLUTIONS, INC., a Nevada Corporation; IMMEDIATE CLINIC SEATTLE, INC., a Nevada Corporation; DRX WA URGENT CARE PROVIDERS, PLLC d/b/a Doctors Express, a Washington Corporation;

Defendants.

No. 2:16-cv-01233-JCC

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER

1
2 **1. PURPOSES AND LIMITATIONS**

3 Discovery in this action is likely to involve production of confidential, proprietary, or
4 private information for which special protection from public disclosure may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order (“Order”). The parties acknowledge that this agreement is
7 consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses
8 to discovery, the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the applicable
10 legal principles, and it does not presumptively entitle parties to file confidential information
11 under seal.

12 **2. “CONFIDENTIAL” MATERIAL**

13 “Confidential” material shall include the following documents and tangible things
14 produced or otherwise exchanged: (a) medical records and health information; (b) financial
15 information and proprietary documents not in the public domain or subject to public
16 disclosure.

17 **3. SCOPE**

18 The protections conferred by this agreement cover not only confidential material (as
19 defined above), but also (1) any information copied or extracted from confidential material; (2)
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 confidential material. However, the protections conferred by this agreement do not cover
23 information that is in the public domain or becomes part of the public domain through trial or
24 otherwise.

25 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

1 4.1 Basic Principles. A receiving party may use confidential material that is
2 disclosed or produced by another party or by a non-party in connection with this case only for
3 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
4 disclosed only to the categories of persons and under the conditions described in this
5 agreement. Confidential material must be stored and maintained by a receiving party at a
6 location and in a secure manner that ensures that access is limited to the persons authorized
7 under this agreement.

8 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

- 11 (a) the receiving party's counsel of record in this action, as well as
12 employees of counsel to whom it is reasonably necessary to disclose the information for this
13 litigation;
- 14 (b) a party, the officers, directors, and in-house counsel of the receiving
15 party to whom disclosure is reasonably necessary for this litigation;
- 16 (c) experts and consultants to whom disclosure is reasonably necessary for
17 this litigation;
- 18 (d) the court, court personnel, and court reporters and their staff;
- 19 (e) copy or imaging services retained by counsel to assist in the duplication
20 of confidential material, provided that counsel for the party retaining the copy or imaging
21 service instructs the service not to disclose any confidential material to third parties and to
22 immediately return all originals and copies of any confidential material;
- 23 (f) witnesses or potential witnesses in the action to whom disclosure is
24 reasonably necessary, and who have signed the "Acknowledgment and Agreement to Be
25 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
26

1 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
2 material shall be marked as such;

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

5 (h) the videographer who videotapes confidential material at a deposition in this
6 litigation;

7 (i) any mediatory or discovery referee in this litigation, and employees and
8 personnel of said mediator or discovery referee;

9 (j) any other individuals agreed to in writing by the designating party.

10 4.3 Filing Confidential Material. Before filing confidential material or discussing or
11 referencing such material in court filings, the filing party shall make a good faith effort to
12 confer with the designating party to determine whether the designating party will remove the
13 confidential designation, whether the document can be redacted, or whether a motion to seal or
14 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that
15 must be followed and the standards that will be applied when a party seeks permission from the
16 court to file material under seal.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
19 party or non-party that designates information or items for protection under this agreement
20 must take care to limit any such designation to specific material that qualifies under the
21 appropriate standards. The designating party must designate for protection only those parts of
22 material, documents, items, or oral or written communications that qualify, so that other
23 portions of the material, documents, items, or communications for which protection is not
24 warranted are not swept unjustifiably within the ambit of this agreement.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions.

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies
8 for protection under this agreement must be clearly so designated before or when the material
9 is disclosed or produced.

10 (a) Information in documentary form: (e.g., paper or electronic documents
11 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), (see, e.g., second paragraph of section 5.2(a) below), the designating party must
13 affix the word "CONFIDENTIAL" to each page that contains confidential material.

14 (b) Testimony given in deposition or in other pretrial or trial proceedings:
15 the parties must identify on the record, during the deposition, hearing, or other proceeding, all
16 protected testimony, without prejudice to their right to so designate other testimony after
17 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
18 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

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

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the designating party's
25 right to secure protection under this agreement for such material. Upon timely correction of a
26

1 designation, the receiving party must make reasonable efforts to ensure that the material is
2 treated in accordance with the provisions of this agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any party may challenge a designation of confidentiality
5 at any time. Unless a prompt challenge to a designating party's confidentiality designation is
6 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
7 significant disruption 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 original
9 designation is disclosed.

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

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
20 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
21 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
22 burdens on other parties) may expose the challenging party to sanctions. All parties shall
23 continue to maintain the material in question as confidential until the court rules on the
24 challenge.

25 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
26 **OTHER LITIGATION.**

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

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

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

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

11 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

19 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 When a producing party gives notice to receiving parties that certain inadvertently
22 produced material is subject to a claim of privilege or other protection, the obligations of the
23 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
24 provision is not intended to modify whatever procedure may be established in an e-discovery
25 order or agreement that provides for production without prior privilege review. Parties shall
26 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

1 **10. NONTERMINATION AND RETURN OF DOCUMENTS**

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

6 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
7 documents provided during discovery or filed with the court, trial, deposition, and hearing
8 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product,
9 and consultant and expert work product, even if such materials contain confidential material as
10 part of the complete client file, which either counsel may maintain for up to six years as
11 recommended by the *WSBA Guide to Best Practices for Client File Retention and*
12 *Management*.

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

1 STIPULATED TO this 4th day of April, 2017.

2 THE BLANKENSHIP LAW FIRM, P.S.

3 SEDGWICK LLP

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Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated this 10 day of April, 2017.



THE HONORABLE JOHN C. COUGHENOUR
U.S. District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____,
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court
for the Western District of Washington on _____ [date] in the case of
JANINE HOUCK V. THE ENSIGN GROUP, INC., ET AL., NO. 2:16CV-01233-JCC. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____