

Hon. J. Kelley Arnold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DUANE BOYLE, through his guardians Marion
and Robert Boyle, *et al.*,

No. C-01-5687 JKA

Plaintiffs,

vs.

AGREED AMENDED PROTECTIVE
ORDER

SUSAN DREYFUS, in her official capacity as
the Secretary of the Washington Department of
Social and Health Services,

Defendant.

This matter having come before this Court upon the Parties' Joint Motion for an Amended Protective Order, it is hereby ORDERED, ADJUDGED and DECREED that an Amended Protective Order shall be issued in accordance with Civil Rule 26(c). It is further ORDERED that:

1. This Order shall govern the designation, production, handling, and treatment of, as well as the provision of access to the public, of all confidential documents and information obtained or observed by the parties or their agents which is confidential pursuant to RCW 70.02.050, RCW 74.04.060, RCW 42.56.230, RCW 74.34.095, and 45 C.F.R. Parts 160-164 and which is obtained or observed as a result of or in the course of this litigation. The purpose

1 of this Order is to protect the privacy of the individuals whose confidential public assistance
2 records and health information is sought in discovery or will be used at trial.

3 2. Documents:

4 When used in this Order, the word “documents” means all written, recorded or graphic
5 matter whatsoever, including, but not limited to, materials produced pursuant to Civil Rule 34,
6 by subpoena or by agreement, deposition transcripts and exhibits, interrogatory answers,
7 responses to requests for admission, and any portion of any Court papers that quote from any of
8 the foregoing.

9 3. Scope and Designation:

10 Any and all documents that include or reveal the names or other personally identifying
11 information of past or current individual Division of Developmental Disabilities (DDD) clients,
12 any persons who have made application for DDD services, or past or present clients or
13 constituents of Plaintiffs, and any documents or information described in RCW 74.34.095(1),
14 shall be governed by this Order. As used herein, “personally identifying information” shall
15 include, but is not limited to, health care record information, any information from which the
16 identity of a client or constituent may be ascertained, and any information which is deemed
17 confidential pursuant to RCW 74.04.060, RCW 70.02.050, RCW 42.56.230, RCW 74.34.095,
18 and 45 CFR Parts 160-164.

19 4. Challenge to Confidentiality Designation:

20 If any party objects to the designation of any document(s) produced or filed as
21 “confidential,” under the above definition, that party may file a motion to resolve the dispute
22 regarding whether such document(s) qualifies for confidential status. Interested parties shall
23 attempt to resolve any such disagreements before submitting them to the Court. Pending
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1 resolution of a dispute over the status of a document under this Order, that document shall be
2 considered a confidential document subject to the protection of this Order. At all times, the
3 party seeking to assert a document's confidentiality bears the burden of showing good cause
4 pursuant to Civil Rule 26(c).

5 5. Identification of Counsel:

6 For the purpose of this Order, "counsel" or "attorney" means counsel of record for the
7 parties of this action and all of their employees, contractors, sub contractors, agents and experts.

8 6. Use of Confidential Material:

9 Confidential records shall be used solely for the purpose of conducting the action
10 entitled *Boyle et al. v. Dreyfus*, Cause No. C01-5687JKA, unless the person who is the subject
11 of such confidential material, or that person's legal guardian, if applicable, authorizes its use for
12 any other particular purpose.

13 7. Use and Designation of Confidential Material in Court Filings:

14 When the parties file pleadings, motions, affidavits, declarations, deposition transcripts,
15 briefs, or other documents with the Court that refer to individuals covered by this Agreed
16 Protective Order, the parties must ensure that the individuals' names are not used and rather
17 must replace each name with a designated letter or letters. Absent circumstances not in the
18 control of either party, each individual covered by this Protective Order must be identified
19 during discovery, and the parties shall agree upon the unique assigned letter(s) designation as
20 soon as possible following identification of the individual and exchange of confidential records.
21 In the event a party files pleadings with the Court that refer specifically to a person whose
22 confidential information is the subject matter of this Protective Order and whose identifying
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1 initials or letters have not yet been agreed to, that party must notify opposing counsel as to the
2 identity and corresponding designated letter(s) contained in the pleadings.

3 If the individual who is the subject of the document(s) filed with the Court, or that
4 person's legal guardian, if applicable, authorizes a party to use the individual's name, any party
5 may reference the individual by name in the document(s) filed with the Court.

6 Portions of confidential records (such as medical records) may be attached to any
7 pleadings, motions, affidavits, declarations, deposition transcripts, briefs, or other documents
8 filed with the Court, but all records that contain personally identifying information must be filed
9 under seal. When submitting or filing records with the Court under seal, the parties shall use the
10 following designation:

11 **CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER. THIS**
12 **ENVELOPE, CONTAINING THE ABOVE-IDENTIFIED PAPERS FILED**
13 **BY [NAME OF THE FILING PARTY], IS NOT TO BE OPENED NOR**
14 **THE CONTENTS THEREOF DISPLAYED TO ANYONE OTHER THAN**
15 **THE COURT AND ITS STAFF, OTHER THAN BY COURT ORDER OR**
16 **AGREEMENT OF THE PARTIES.**

17 Only the confidential records will be filed under seal. The pleadings, motions, affidavits,
18 declarations, deposition transcripts, briefs, or other documents filed with the Court will not be
19 filed under seal.

20 If the person who is the subject of the confidential records or that person's legal
21 guardian, if applicable, authorizes a party to use the confidential records, any party may use or
22 file the records in an unsealed form. Upon filing with the Court, the portion of the confidential
23 record that has not been filed under seal becomes part of the public record.

1 8. Disclosure of Confidential Material:

2 All confidential records shall be controlled and maintained in a manner that precludes
3 access by any person not entitled to access under this Protective Order. Any patient's
4 confidential information shall be disclosed only to the following persons:

- 5 (a) Counsel, including paralegal, investigative, secretarial, and clerical
6 personnel who are engaged in assisting such counsel in the above entitled
7 action;
- 8 (b) Any independent outside expert or consultant, and employees and
9 assistants under the control of such expert or consultant, who is engaged
10 by counsel in this litigation, whether or not such expert is paid directly by
11 a party;
- 12 (c) Any director, officer, or employee of a party who is requested by counsel
13 for such party to work directly on the above entitled action;
- 14 (d) Any deposition or trial witness;
- 15 (e) Any person who authored or received the particular confidential
16 information sought to be disclosed;
- 17 (f) Any court or other shorthand reporter or typist recording or transcribing
18 testimony; or
- 19 (g) The Court.

20 Confidential information shall not be disclosed to persons described in Paragraphs 8(b),
21 (c), or (d) unless or until such persons have been provided with a copy of this Protective Order
22 and have agreed in writing to abide by and comply with the terms and provisions therein.

23 9. Use of Confidential Information During Discovery:

24 Depositions. A party may designate as confidential the deposition transcript and all
exhibits to the deposition by indicating on the record at the deposition that certain information is
confidential and subject to the terms of this Protective Order. Alternatively, the party may make
a confidential designation by notifying all parties in writing within twenty (20) days after the
deposition transcript is received by the party of the portions of the transcript and/or exhibits

1 designated as confidential. During this interim twenty (20) day period, the entire transcript and
2 the exhibits attached thereto shall be treated by all the parties as confidential. All transcripts and
3 deposition exhibits containing any confidential information shall be marked:
4 **“CONFIDENTIAL. Subject to restriction by a Protective Order.”**

5 Interrogatories and Requests for Production, and other discovery related matters. Use of
6 confidential information during discovery shall be designated as follows:

- 7 (a) To designate a document as one containing confidential information, the
8 party producing the document, shall stamp the first page and every page
9 thereafter as follows: **“CONFIDENTIAL. Subject to restriction by a
10 Protective Order.”**
- 11 (b) All confidential documents produced by the parties during discovery
12 shall be stamped as indicated in paragraph 9(a) above.
- 13 (c) Any responses to interrogatories, requests for production, or requests for
14 admission, which are designated by a party as containing confidential
15 information, shall be submitted in a separate document with each page
16 stamped as indicated in paragraph 9(a) above.
- 17 (d) If documents are produced on a computer disc, and all documents on the
18 disc contain confidential information, they shall all be designated
19 confidential by application to the disc of a sticker bearing the language
20 set out in paragraph 9(a). If any of the documents are used at depositions
21 or attached to pleadings, each page of these documents shall be stamped
22 as indicated in paragraph 9(a).

23 10. Use of Confidential Information at Hearing or Trial:

24 A party may, subject to the rules of evidence and order of the Court, use any confidential
information for any purposes at trial or at any hearing before a judicial officer in the above
entitled action. Any confidential information used in any court proceeding shall not lose its
confidential status through such use, unless the Court orders otherwise.

11. Preservation of Rights and Privileges:

Nothing contained in this Protective Order shall (1) affect the right of any party or
witness to make any other type of objection or claim; or (2) diminish the Washington Protection

1 and Advocacy System's federal access rights under 42 U.S.C. § 10801, et seq., as amended; 42
2 U.S.C. § 15041, et seq.; and the regulations promulgated thereunder.

3 12. Modification of the Protective Order:

4 This Protective Order shall not prevent a party from applying to the Court for relief
5 therefrom, or from applying to the Court for an additional protective order, or for modification
6 of this Order.

7 13. Return of Materials:

8 Within thirty (30) days after the conclusion of the above entitled action, including,
9 without limitation, any appeal or retrial, all confidential information, including copies, extracts,
10 or summaries, shall be returned to counsel who provided it, unless that person who is the subject
11 of such confidential material or that person's legal guardian, if any, directs that such materials
12 be given to that person's legal guardian instead of the producing party or upon consent of
13 counsel for the producing party. Alternatively, a party or counsel in possession of documents
14 containing confidential information shall certify in writing within the 30-day period that all such
15 documents have been destroyed. As to those materials which contain confidential information,
16 but constitute or reflect counsel's work product, all such work product and all copies shall either
17 be destroyed or retained by counsel in a secure place, subject to this Protective Order.

18 14. Inadvertent Disclosure:

19 Should any confidential information be disclosed, through inadvertence or otherwise, to
20 any person not authorized to receive it under this Protective Order, then the disclosing person(s)
21 shall promptly: (a) identify the recipient(s) and the circumstances of the unauthorized disclosure
22 to the relevant producing person(s); and (b) use best efforts to bind the recipients to the terms of
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1 this Protective Order. No information shall lose its confidential status because of its disclosure
2 to a person not authorized to receive it under this Protective Order.

3 15. Upon conclusion of the above entitled action, the provisions of this Protective Order
4 shall continue to be binding.

5 16. This Protective Order shall remain in full force and effect until modified,
6 superseded, or terminated by consent of the parties or by Order of this Court made upon
7 reasonable written request.

8 Dated this 29th day of March, 2011.

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11 J. Kelley Arnold
United States Magistrate Judge

12 Presented by:

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