

AHLA NO.

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Claimant,	§	
	§	
v.	§	BEFORE THE AMERICAN
	§	HEALTH LAW ASSOCIATION
	§	
	§	
	§	
Respondent.	§	

AGREED PROTECTIVE ORDER

The parties, through their respective attorneys-in-charge, hereby agree to, and the Arbitrator hereby enters, the following Protective Order:

DEFINITIONS

1. "Confidential Information" is defined as any material that either (a) is designated "Confidential" or (b) contains Confidential Health Information. Such material may include, but is not limited to, material appearing in: (1) Documents (2) Discovery Responses; (3) pleadings or other filings; (4) Testimony; or (5) discovery requests.

2. "Documents" include all writings, recordings and photographs as defined by Federal Rule of Evidence 1001, including originals and all copies thereof, in whatever form maintained or produced.

3. "Discovery Responses" include Documents produced in response to Requests for Production or subpoenas, responses to Interrogatories, and responses to Requests for Admission.

4. "Testimony" includes all testimony given under oath in this proceeding, including, but not limited to, all transcripts, recordings or videotapes thereof, and affidavits.

5. "Arbitrator" means the arbitrator in this action and/or any court reviewing this action.

6. "Order" means this Agreed Protective Order.

7. "Party" or "Parties," respectively, means singly or together each party named in this arbitration. "Non-Party" or "Non-Parties," respectively, means singly or together any person or entity who receives a discovery request from a Party or Parties, and provides Discovery Responses.

8. "Recipient" means any Party or other person or entity that receives Confidential Information from a Disclosing Party.

9. A "Designating Party" is the Party or Non-Party that designates material as "Confidential."

10. A "Disclosing Party" is any Party, Non-Party or other person or entity (including but not limited to a Recipient) that discloses, in any manner whatsoever, any Confidential Information.

11. The "Agreement" is the Agreement attached hereto as Exhibit "A."

12. "Disclosure," "disclose," "disclosed" and "disclosing" mean disclosure in any way or manner, whether or not permissible under this Order, including but not limited to allowing any review of Confidential Information by persons not authorized by this Order to review it, or by orally or in any written form either directly or indirectly communicating the content or substance of any Confidential Information to persons not authorized by this Order to review it.

13. "Permitted Persons" include:

a. officers, employees and agents of the Parties, to the extent reasonably necessary for the evaluation, supervision and/or prosecution or defense of claims in this arbitration, and officers, employees and agents of Non-Parties, to the extent reasonably necessary to answer discovery requests and provide Discovery Responses, each of whom shall be required to sign the Agreement prior to any disclosure;

b. officers, employees and agents of the Parties, to the extent reasonably necessary for an audit conducted by or on behalf of such Party, each of whom shall be required to sign the Agreement prior to any disclosure;

c. named counsel of record for the Parties and partners, shareholders and employees of counsel of record and their firms who are assisting in evaluation, supervision, and/or prosecution or defense of this arbitration, and named counsel of record for the Non-Parties, to the extent reasonably necessary to answer discovery requests and provide Discovery Responses, each of whom shall be required to sign the Agreement prior to any disclosure;

d. in-house attorneys for a Party who are evaluating, supervising and/or actively working on this action, and in-house attorneys for a Non-Party, to the extent reasonably necessary to answer discovery requests and provide Discovery Responses, each of whom shall be required to sign the Agreement prior to any disclosure;

e. expert witnesses or consultants, and their employees and agents who are assisting them, who have been engaged by counsel for a Party to assist in

evaluating, prosecuting or defending this action, each of whom shall be required to sign the Agreement prior to any disclosure;

f. a witness who is an employee or agent of a Designating Party, when he/she is to be questioned regarding information the Designating Party has designated as "Confidential," each of whom shall be required to sign the Agreement prior to any disclosure;

g. a deponent or anticipated fact witness whom the Disclosing Party believes, in good faith, may have knowledge pertinent to the Confidential Information to be disclosed to such a deponent or witness, each of whom shall be required to sign the Agreement prior to any disclosure;

h. court reporters and videographers, each of whom shall be required to sign the Agreement prior to any disclosure;

i. a mediator selected or agreed-upon by the Parties, who shall be required to sign the Agreement prior to any disclosure;

j. the Arbitrator and his staff, under such safeguards as the Arbitrator may direct;

k. vendors of litigation support services, each of whom shall be required to sign the Agreement prior to any disclosure;

l. senders or recipients of the original Document who are specified on the face of the Document or otherwise received or reviewed the Document in the course of business prior to the commencement of this action, if, in the reasonable and good faith belief of the Disclosing Party's counsel, it is necessary for legitimate discovery or litigation purposes, each of whom shall be required to sign the Agreement prior to any disclosure; and

m. any other persons, on such terms and conditions as the Parties may agree to in writing, or as directed by further Order of the Arbitrator, each of whom shall be required to sign the Agreement prior to any disclosure.

SCOPE OF ORDER

14. Except as otherwise ordered by the Arbitrator, this Order shall apply to all Confidential Information.

15. Confidential Information must be used solely and exclusively for purposes of this case, including any appellate proceedings or any related mediation, and then only in accord with the provisions of this Order. Such information may not be used in or for other cases, proceedings or disputes, or for any commercial, business, competitive or other purpose.

16. Nothing in this Order shall be construed to limit in any way the right of the Parties, or any of their affiliates, to use any Confidential Information that they produced (to the other side) for any purpose that state and federal law would otherwise permit.

DESIGNATING “CONFIDENTIAL INFORMATION”

17. Any Party or Non-Party may designate information provided by that Party or Non-Party as “Confidential” under the following conditions:

a. Material is “Confidential” when it contains financial, proprietary, technical, commercial or competitively sensitive information or trade secrets, the disclosure of which might harm the competitive position or business interests of the Designating Party and which the Designating Party does not reveal to a third party except under confidentiality protections, including, but not limited to, information which is not known to the general public and/or to the Designating Party’s competitors in the industry and which gives the Designating Party a competitive advantage.

b. Information that is available to the general public may not and does not constitute Confidential Information.

c. Material may also be designated “Confidential” when it contains personal information which is of a nature which, if disclosed, could invade the legitimate privacy interests of the person to whom the document pertains. This includes “Confidential Health Information” – without regard to whether the material has been designated “Confidential” hereunder – that identifies an individual in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of that individual, the provision of health care to that individual, or the past, present, or future payment for the provision of health care to that individual. Confidential Health Information specifically includes “Protected Health Information,” as that term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. parts 160 and 164, promulgated pursuant Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 160.130 (“health information”) and 164.501 (“individually identifiable health information”)), and thus, includes, without limitation medical bills, claim forms, charges sheets, medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements, remittance advice forms, explanations of benefits, checks, notices, and requests, and also includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from Confidential Health Information.

d. Material may be designated as “Confidential” when a Party or Non-Party reasonably and in good faith believes that the material meets the standards set forth in Paragraphs 17.a-17.c above.

18. The designation may be done by any of the following methods:

a. Confidential Information contained in a Document, a Discovery Response, a discovery request, or a pleading filed with the Arbitrator may be designated as such by stamping or otherwise marking the page thereof containing the Confidential Information with a "Confidential" notation. If Confidential Information is produced in computer storage media, such as disks or tapes, then the Designating Party shall affix the word "Confidential" to the cover or container of the storage media and/or the file name of the Document disclosed.

b. Confidential Information revealed in a deposition, affidavit or by other Testimony, whether by way of question, answer or exhibit, may be designated "Confidential" by either noting the claim of confidentiality pursuant to this Order on the record at the time of the Testimony, or by making such a claim within twenty (20) days of receipt of the transcript, exhibits or other Testimony, by designating in writing which portions of the transcript, exhibits or other Testimony are "Confidential." All deposition transcripts shall be treated as if they contain Confidential Information until at least twenty (20) days after receipt of the transcript by the deponent/witness.

19. A copy of each signed Agreement must be maintained by counsel of the respective Disclosing Party. Additionally, all counsel shall maintain a list of the names of all third persons to whom disclosure of Confidential Information was made.

20. Confidential Information may be used at any pre-arbitration proceeding or at the arbitration hearing, subject to any orders which the Arbitrator may enter with respect to the treatment of Confidential Information.

21. Confidential Information which is inadvertently disclosed may subsequently be designated as "Confidential" by notifying counsel for the Party to whom the material was disclosed, in writing, of the inadvertent nature of the disclosure, as long as the designation is asserted within twenty (20) days of the discovery of the inadvertent disclosure. Such material shall be treated as Confidential Information subsequent to the notification of the inadvertent disclosure.

PROCEDURE FOR CHALLENGING DESIGNATION OF "CONFIDENTIAL INFORMATION"

22. Any Party who wishes to challenge another Party's or Non-Party's designation of information as "Confidential" shall proceed as follows:

a. Counsel shall make reasonable attempts to confer in a good faith effort to resolve any disagreement as to the use or designation of information as "Confidential";

b. If such efforts fail, the challenging Party may file an appropriate motion with the Arbitrator which, without limitation, identifies by category and/or document number (Bates-label) the information as to which relief is sought;

c. The Designating Party bears the burden of proving that the Document, Discovery Response, pleading, discovery request or Testimony designated as “Confidential” merits the “Confidential” designation by satisfying the requirements of Paragraphs 17.a-c of this Order.

d. Until the motion is ruled upon by the Arbitrator, any designation of “Confidential” shall remain in full force and effect and the information so designated shall be treated as “Confidential Information” in accord with this Order.

23. A failure to challenge the propriety of a designation of “Confidential” at the time the designation is made shall not preclude or detract from a subsequent challenge. Further, neither the taking of, nor the failure to take, any action to enforce the provisions of this Order, nor the failure to object to any act or omission, waives any claim, defense or right in this arbitration, including any claim or defense that information is or is not proprietary, secret or confidential.

DISCLOSURE AND USE OF “CONFIDENTIAL INFORMATION”

24. Except with the prior written consent of the Designating Party, material designated as “Confidential” may not be disclosed in any way, except to the Permitted Persons, each of whom (except as set forth in Paragraph 13.j) shall be required to sign the Agreement prior to any Disclosure.

25. It is the responsibility of counsel for each Party to maintain material designated as “Confidential” in a secure manner, so as to allow access only to Permitted Persons.

26. Prior to any disclosure by counsel of Confidential Information in a deposition, all persons in attendance shall be alerted to the impending disclosure. At the outset of any deposition in which counsel for any Party or Non-Party reasonably anticipates that Confidential Information will be disclosed during the course of the deposition, that counsel shall alert all persons in attendance of the provisions of this paragraph. At the time attendees are alerted of the impending disclosure of Confidential Information, non-Permitted Persons shall be excused, and Permitted Persons who have not previously signed the Agreement shall be given a copy of this Order and shall sign the Agreement before questioning concerning the Confidential Information proceeds. Failure by counsel to alert all persons in attendance at the outset of the deposition may result in a temporary delay of the deposition to permit compliance with the preceding sentence. Failure to follow this procedure is not a waiver of any Party’s or Non-Party’s discovery rights nor of any right to designate the Testimony and accompanying exhibits as Confidential Information. The court reporter shall return the original deposition transcript in a sealed envelope marked “Confidential” to the attorney noticing the deposition.

27. All Confidential Information that is submitted to the Arbitrator or used in any proceeding before the Arbitrator shall remain subject to this Order, unless the Arbitrator orders otherwise.

MISCELLANEOUS

28. Nothing in this Order shall be interpreted as limiting a Party's or Non-Party's obligation to produce discoverable information. This Order is intended to facilitate production of information, and is without prejudice to the right of any Party or non-Party to apply to the Arbitrator for any other or further relief or to object on any appropriate grounds to any discovery requests.

29. The inadvertent or unintentional disclosure of "Confidential Information" shall not be construed as a waiver of the Designating Party's claim of confidentiality as to the specific information disclosed or as to any other information.

30. If a Party or Non-Party inadvertently discloses protected work product or privileged information, such inadvertent disclosure shall in no way prejudice or otherwise constitute a waiver of any such protection, privilege or immunity. The Party or Non-Party that made the inadvertent disclosure shall promptly notify each receiving Party of the inadvertent disclosure in accordance with FED. R. CIV. P. 26(b)(5)(B) (a "Clawback Request"). Upon receiving a Clawback Request, each receiving Party shall promptly return the inadvertently disclosed information and make no further use of it or any copies of or summaries created from the inadvertently disclosed information, even if the receiving Party disputes the claim of privilege or immunity. The receiving Party shall return any storage media containing electronic copies of the allegedly protected, privileged or immune information upon receipt of a replacement storage medium from the Party or Non-Party asserting the protection, privilege or immunity. If the receiving Party asserts, in good faith, that the inadvertently disclosed information is not protected by any protection, privilege or immunity, then the Parties and/or non-Parties shall make reasonable attempts to confer and to resolve their dispute in good faith. If, despite such efforts, the Parties and/or Non-Parties are unable to reach agreement within seven calendar days of the Clawback Request, then any Party or Non-Party may petition the Arbitrator for appropriate relief.

31. Designation of any information as "Confidential" shall have no effect with respect to any substantive or evidentiary issues in this proceeding, and the designation or attempt to designate any information as "Confidential" shall not be admitted in evidence in this proceeding.

32. The Parties and/or Non-Parties may, by written stipulation, provide for exceptions to this Order.

33. Nothing in this Order shall preclude a Party or Non-Party from seeking modification of this Order.

34. Neither the termination of this arbitration nor the termination of employment of any person who had access to any Confidential Information shall relieve any person from the obligation to adhere to the restrictions on use of Confidential Information set forth in this Order and the Agreement.

35. If a Recipient or its counsel receives a subpoena or other legal process seeking the production in another proceeding of Confidential Information of any other Party or Non-Party,

then the Recipient or its counsel shall promptly notify the Designating Party's attorney of record in this action and furnish that attorney with a copy of the subpoena or other legal process. A Recipient is permitted to seek protection from, or to comply with, the subpoena or other legal process except to the extent the Designating Party obtains and delivers to the Recipient an order modifying, quashing, or providing protection from the subpoena or other legal process prior to the later of: (a) the deadline for response set forth in the subpoena or other legal process; or (b) the Recipient's actual response to the subpoena or process.

PROCEDURE AFTER FINAL RESOLUTION

36. Within sixty (60) days after the conclusion of this matter, including any post-arbitration review or appellate proceedings, all Confidential Information, including all copies made of same, except as specified below, shall be destroyed by the Recipient or returned to the Designating Party, at the election of the Recipient; provided however that if the Recipient elects to destroy the Confidential Information, then the Recipient shall certify its destruction of the materials upon request by the Designating Party. All pleadings, Arbitrator filings, discovery requests, Testimony, responses to interrogatories and responses to requests for admission, and all notes, drafts, memoranda, work papers, correspondence and other materials prepared by the attorneys of record for this Arbitration, which contain or reflect the content of any Confidential Information may either be destroyed or retained by the attorneys of record but, if retained, must be treated in accord with this Order.

37. To the extent that an expert or consulting expert is a Recipient of Confidential Information, such expert or consulting expert shall either destroy or return any Confidential Information to the Designating Party, at the election of the Recipient, within sixty (60) days after the conclusion of this matter, including any post-arbitration review or appellate proceedings. To the extent that the expert or consulting expert elects to destroy the Confidential Information, then the expert or consulting expert shall certify its destruction of the materials upon request by the Designating Party. An expert or consulting expert may only maintain copies of any expert reports prepared by the expert, including spreadsheets, submitted and/or used in this Arbitration. Subject to this limited exception for written reports and spreadsheets submitted and/or used in this Arbitration, no originals or copies of any Confidential Information, nor any Confidential Information contained within any notes, memoranda, work papers, computer models, computer programs, data systems, simulations, mapping processes, claims analysis software or any other materials prepared by experts or consulting experts will be retained by the expert or consulting expert to whom disclosure was made. Additionally, any models, computer programs, data systems, simulations, mapping processes, and claims analysis software containing any Confidential Information disclosed in this Arbitration shall not be used for any other purposes other than this Arbitration.

38. The provisions of this Order shall remain in full force and effect after the entry of final judgment in this case (including any appellate proceedings).

39. The Arbitrator will retain jurisdiction, both before and after entry of final judgment in this case, to construe, enforce and modify the provisions of this Order.

ENFORCEMENT

40. Except as otherwise provided herein, all Parties and other Recipients are prohibited from using "Confidential Information," except in conjunction with evaluating, supervising, prosecuting or defending this arbitration, and are further prohibited from disclosing "Confidential Information" to any other person, except in accord with the provisions of this Order.

41. The Parties and Non-Parties reserve all rights to apply to an appropriate Arbitrator for an order: (1) enforcing this order (including by sanctions as authorized by statute, rule, and the inherent power of the Arbitrator); (2) modifying this Order; or (3) seeking other or additional protection against discovery or use of Protected Materials.

SIGNED and ENTERED this _____ day of _____, 2___.

Arbitrator

AGREED:

By: _____

By:

AHLA NO.

Claimant,

v.

Respondent.

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**BEFORE THE AMERICAN
HEALTH LAW ASSOCIATION**

AGREEMENT

I have read the Agreed Protective Order entered in the above captioned case and I agree to abide by its terms. I further agree to submit to the jurisdiction of the Arbitrator in that matter, for purposes of enforcement of the Protective Order, and any ancillary proceedings regarding its interpretation, enforcement or effect.

SIGNED this ____ day of _____, 2__.

PRINTED NAME

SIGNATURE

Address: _____

Phone No.: _____