

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

CHRISTOPHER DAUGHERTY, *on behalf
of himself and others similarly situated,*

Plaintiff,

Case No.: 2019-CA-003178 NC

CLASS ACTION

v.

SARASOTA COUNTY PUBLIC
HOSPITAL DISTRICT D/B/A SARASOTA
MEMORIAL HEALTH CARE SYSTEM,

Defendant.

_____ /

**AGREED ORDER ON JOINT MOTION FOR QUALIFIED PROTECTIVE ORDER
AND RESTRICTIVE USE OF PROTECTIVE HEALTH INFORMATION (PHI) FOR
CLASS SETTLEMENT ADMINISTRATION**

WHEREAS, this Court has been advised that the parties to this action, Christopher Daugherty (“Plaintiff” or “Class Representative”), Sarasota County Public Hospital District d/b/a Sarasota Memorial Health Care System, (“SMHCS”), through their respective counsel, have agreed, subject to Court approval following class notice and a hearing, to settle the above-captioned lawsuit (“Lawsuit”) upon the terms and conditions outlined in the Class Action Settlement, (“Settlement Agreement”) that will be subsequently filed with the Court, and the Court deeming that the definitions outlined in the Settlement Agreement as well as the class administration procedures will be reviewed for approval by the Court in the Parties’ forthcoming Joint Motion for Preliminary Approval of the Class Settlement, which has been incorporated by reference herein.

NOW, THEREFORE, based upon the Parties’ representations and terms and conditions to be included in the forthcoming Settlement Agreement and proposals contained in the forthcoming

Joint Motion for Preliminary Approval of Class Settlement, this Court’s review and consideration of the filings, records, and proceedings herein, and it appearing to this Court that, upon preliminary examination, the proposed methods of class administration and efforts to protect and security the “protected health information” in compliance with HIPAA and Florida law s appears fair, reasonable, and adequate to administrator the class notice, review and verify class eligibility and entitlement to class distribution without compromising medical or health information of each of the class member beyond which is reasonably necessary to effectively administer the class settlement between counsel and the class administrator:

IT IS HEREBY ORDERED:

This Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto. Pursuant to Rule 1.220 of the Florida Rules of Civil Procedure, the Lawsuit has already been certified as of January 30, 2025 [DIN #204]. The Parties participated in mediation on December 20, 2025, before Mediator Gregory Holder. They entered into a Settlement Agreement detailing the class administrative process, protections, and the necessary uses of class members' medical information, including contact information, as account/insurance information, to determine class member eligibility. The Parties have jointly filed a Motion for Qualified Protective Order and request the Court to adopt the motion to provide permission for the parties to use and disclose certain medical information to the third-party administrator and the Parties' Counsel to facilitate the terms and conditions of the class administration of the case.

Given the sensitive nature of PHI and the anticipated volume of such information in this litigation, the requested order is essential to safeguard the privacy rights of class members and facilitate the necessary class administration of the proposed settlement agreement. The Proposed Protective Order filed by the Parties has been carefully tailored to comply with the requirements

of the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. § 164.512(e), and Florida law, including Fla. Stat. § 456.057, which provides additional and more stringent protections for medical records.

The Court grants the Parties' Motion Seeking a Qualified Protective Order. It authorizes the Parties and the third-party class administrator to ensure that PHI is used solely for purposes of class administration, including reviewing account status for class determination and class notice, and reviewing payment and/or insurance information to verify class membership eligibility, if necessary. This access, review, and dissemination will be appropriately limited, and all disclosures are subject to strict confidentiality and security protocols.

Compliance with Conferral Requirement

The parties have certified that they conferred in good faith and jointly agree that this Qualified Protective Order is necessary and appropriate to balance the parties' legitimate review and class administration needs with the privacy interests of the individuals whose PHI may be disclosed.

The Court grants such Motion to establish a protective order that will govern the use, dissemination, disclosure, storage, and ultimate disposition of PHI produced in this case. The order is designed to address the unique challenges posed by the class action context, including the volume of PHI, the number of individuals involved, and the need for secure handling and restricted use of such information. In addition to federal HIPAA requirements, Florida state law, including Fla. Stat. § 456.057, governs the handling of medical records and PHI in this litigation.

The Court finds that the Joint Motion for Protective Order establishes the necessary safeguards for PHI in this class action while complying with both federal and state law requirements. The request for a protective order satisfies HIPAA's requirements for a qualified

protective order by prohibiting the use of PHI outside this litigation and requiring its return or destruction upon conclusion of the case.

Third, the order incorporates Florida law's more stringent protections, including broader prohibitions on disclosure, stricter notice requirements, and special protections for records created by Florida healthcare practitioners. Finally, the order addresses the unique challenges of PHI in class actions through specific protocols for class certification, notice to class members, opt-out procedures, and technical safeguards for electronic PHI. This comprehensive approach ensures proper protection of sensitive health information while allowing the parties to conduct necessary review, use, dissemination, and disposal of such PHI during the class settlement administration process.

Rule 1.280(c) of the Florida Rules of Civil Procedure provides the Court with apparent authority to issue protective orders in class discovery and administrative proceedings. The Rule states that a court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *FRCA 1.280(c)*. A trial court possesses "significant discretion" in regulating discovery under Florida Rule of Civil Procedure 1.280(c). *RaceTrac Petroleum, Inc. v. Sewell*, 150 So. 3d 1247, 1252 (Fla. 3d DCA 2014) (explaining a trial court's discretion in granting a motion for a protective order based on cumulative discovery under Rule 1.280(c)); *see also Ferrandino v. Riley*, 236 So. 3d 493, 494-95 (Fla. 1st DCA 2018) (explaining broad discretion of trial court to regulate discovery, "particularly the court's finding that enforcement of the subpoena would subject [a non-party witness] to an undue burden and harassment," and noting that if reasonable people could differ as to the propriety of an action taken, no abuse of discretion exists).

Protected Health Information (PHI) clearly constitutes confidential information warranting protection under Rule 1.280(c). HIPAA defines and regulates PHI, establishing strict requirements for its disclosure. The Health Insurance Portability and Accountability Act prohibits covered entities from receiving, directly or indirectly, remuneration in exchange for protected health information without proper authorization. 42 USC § 17935.

This statutory protection underscores the confidential nature of such information. Florida law provides even stronger protection for medical records in some contexts. As noted by Florida courts, "HIPAA only preempts state laws relating to substantive privacy rights concerning individually identifiable health information which are less stringent than HIPAA's privacy protections." *Paylan v. Fitzgerald*, 223 So. 3d 431, 434 (Fla. 2d DCA 2017). When state law provides greater protection than HIPAA, those protections remain in force. *Id.* Section 456.057(7) provides in pertinent part as follows:

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), *such records may not be furnished to. The medical condition of a patient may not be discussed with any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:*

.....

3. In any civil or criminal action, unless otherwise prohibited by law, *upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.*

Id.

The Parties have demonstrated, by the record and the forthcoming settlement terms, good cause for the issuance of a protective order in this case. As established in federal case law, "The

party seeking a protective order has the burden of showing that good cause exists for issuance of that order." *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 142 (2d Cir. 2004). The sensitive nature of the PHI at issue in this class action litigation satisfies this burden. The disclosure of PHI in litigation must be carefully managed to comply with both federal and state privacy laws. Florida courts have recognized that "to the extent that [a state law] could be construed to permit disclosure of confidential medical records without a valid authorization, it would be preempted by HIPAA." *Shands Jacksonville Med. Ctr., Inc. v. Pusha*, 254 So. 3d 1076,1084 (Fla. 3d DCA 2018).

The joint nature of this Motion demonstrates that all parties recognize the need to protect PHI during the class settlement administration process. This consensus strengthens the case for the Court to grant the requested order, as it shows that the parties have worked collaboratively to address privacy concerns while facilitating necessary information to efficiently and adequately conduct the class administrative process. The parties have satisfied the procedural requirement of Rule 1.280(c) by conferring in good faith before filing this Motion.

The Parties have demonstrated the requirements for a Qualified Protective Order under HIPAA regulations under 45 C.F.R. § 164.512(e)(1)(v). First, the protective order must prohibit the parties from using or disclosing the PHI for any purpose other than the litigation for which it was requested. Second, the order must require either that the PHI be returned to the covered entity or that it be destroyed at the end of the litigation. *Nw. Mem'l Hosp. v. Ashcroft*, 362 F.3d 923 (7th Cir. 2004). The proposed protective order explicitly incorporates both of these requirements, thereby satisfying HIPAA's standards for a qualified protective order.

The proposed protective order contains specific provisions prohibiting the parties from using or disclosing PHI for any purpose other than the present litigation. This restriction aligns with HIPAA's general prohibition on the sale or exchange of protected health information without

proper authorization. The proposed protective order also includes provisions requiring that all PHI be either returned to the SMHCS's counsel or destroyed at the conclusion of the litigation. This requirement ensures that sensitive health information is not retained by parties who no longer have a legitimate need for it after the litigation concludes. The order specifies procedures for certifying compliance with this requirement, further strengthening the protections afforded to the PHI. This provision directly satisfies the second requirement for a qualified protective order under HIPAA regulations. *Nw. Mem'l Hosp. v. Ashcroft*, 362 F.3d 923 (7th Cir. 2004).

The protective order carefully delineates who may access PHI during the litigation. Access is limited to attorneys, experts, including the class administrator and staff retained for the litigation, court personnel, and other individuals with a legitimate need to review the information for purposes of the litigation. The Parties and Class Administrator have established specific protocols for the secure storage of PHI during the class administration process. These measures are designed to prevent unauthorized access, use, or disclosure of protected information.

In recognition of the serious consequences of unauthorized disclosure of PHI, the Parties have established protocols for notifying affected individuals in the event of a breach. These notification requirements supplement the protections already in place under HIPAA and ensure prompt remedial action if protected information is compromised.

The protective order acknowledges that certain information may be de-identified in accordance with HIPAA standards, thereby removing it from the category of protected health information. Under HIPAA, information that is de-identified in accordance with the de-identification requirements is not subject to the same restrictions as PHI. *Fla. Stat. § 501.704*. The order outlines proper de-identification procedures consistent with the standards outlined in 45 C.F.R. § 164.514.

1. PHI During Class Certification

The proposed protective order establishes specific protocols for handling PHI during the class certification process. The protective order draws upon HIPAA's provisions for de-identification of health information, which permit the use of de-identified information that has been correctly de-identified in accordance with HIPAA requirements. *Fla. Stat. § 501.704*. This approach allows parties to present necessary information to the Court while minimizing privacy concerns.

2. Opt-Out Procedures for PHI Use

The protective order establishes clear procedures for class members to opt out of having their PHI used in the litigation. This approach is consistent with HIPAA's prohibition on the sale of electronic health records or PHI, which requires that "a covered entity or business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the covered entity obtained from the individual. A valid authorization that includes a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual." 42 U.S.C. § 17935.


For class members who choose to opt out, the protective order establishes a tracking system to ensure their PHI is not used. This ensures that class members have multiple opportunities to protect their PHI from being used in ways they disapprove.

3. Balancing Class Administration Efficiency and Privacy

The protective order maintains a balance between efficient class administration and management and the privacy interests of class members. It recognizes that while access to certain PHI may be necessary for class administration and litigation purposes, such access must be limited and controlled. The protective order permits parties to seek additional protections when needed, consistent with the court's authority to "for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." The protective order also recognizes that Florida law provides strong protections for medical records, and that to the extent any state law "could be construed to permit disclosure of confidential medical records without a valid authorization, it would be preempted by HIPAA." *Pusha*, 254 So. 3d at 1084.

For the foregoing reasons, the parties' Motion for Qualified Protective Order is **GRANTED**. The Parties and the Third Party Administrator are provided a protective order for the use, disclosure, storage, and ultimate disposition of Protected Health Information in this class action proceeding, including, but not limited to, class member analysis, class notification, class administration, verification, and eligibility requirements that are consistent with HIPAA, Florida law as well as necessary to provide for the effective and efficient administration of the terms and conditions of the Class Action Settlement Agreement and the administrative process to be submitted to the Court for approval and issuance of a preliminary approval order.

SO ORDERED AND ADJUDGED in Sarasota County, Florida.


4/29/2019 7:37 AM 2019 CA
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e-Signed 4/29/2019 7:37 AM 2019 CA 003178 NC
Hunter Carroll, Circuit Court Judge