

Protective Orders

There are also circumstances in which an attorney for a party may seek a court order permitting access to protected health information. An example from Illinois follows:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
ORDER

This matter having come to be heard on the Motion of Defendant, _____, for the Entry of a Qualified Protective Order, due notice hereof having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED as follows:

- (1) The current parties (and their attorneys) and any future parties (and their attorneys) to the above-captioned matter are hereby authorized to receive, subpoena, and transmit "protected health information" (also referred to herein as "PHI") pertaining to *[list all patient names, in bold]*, to the extent and subject to the conditions outlined herein.
- (2) For the purposes of this Qualified Protective Order, "PHI" or "protected health information" shall have the same scope and definition as set forth in 45 CFR 160.103 and 160.501. Without limiting the generality of the foregoing, "PHI" includes, but is not limited to, health information, including demographic information, relating to either, (a) the past, present or future physical or mental condition of an individual, (b) the provision of care to an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.
- (3) All "covered entities" (as defined by 45 CFR 160.103) are hereby authorized to disclose PHI pertaining to *[list all patient names, in bold]* to all attorneys now of record in this matter or who may become of record in the future of this litigation.
- (4) The parties and their attorneys shall be permitted to use the PHI of *[list all patient names, in bold]* in any manner that is reasonably connected with the above-captioned litigation. This includes, but is not limited to, disclosure to the parties, their attorneys of record, the attorneys' firm (i.e., attorneys, support staff, agents, and consultants), the parties' insurers, experts, consultants, court personnel, court reporters, copy services, trial consultants, jurors, venire members, and other entities involved in the litigation process.
- (5) At the conclusion of the litigation as to any Defendant (which shall be defined as the point at which final orders disposing of the entire case as to any Defendant have

been entered, or the time at which all trial and appellate proceedings have been exhausted as to any Defendant), that Defendant and any person or entity in possession of PHI received from that Defendant pursuant to paragraph 4 of this order shall destroy any and all copies of PHI pertaining to *[list all patient names, in bold]* except: 1) the Defendant that is no longer in the litigation may retain PHI generated by him/her/it; and 2) the remaining Defendants in the litigation, and persons or entities receiving PHI from those Defendants pursuant to paragraph 4 of this order, may retain PHI in their possession.

- (6) This order shall not control or limit the use of protected health information pertaining to *[list all patient names, in bold]* that comes into the possession of any party or any party's attorney from a source other than a "covered entity", (as that term is defined in 45 CFR 160.103).
- (7) Nothing in this order authorizes defense counsel to obtain medical records or information through means other than formal discovery requests, subpoena, depositions, pursuant to a patient authorization or through attorney-client communications. Likewise, nothing in this order relieves any party from complying with the requirements of the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1, *et seq*), the Aids Confidentiality Act (410 ILCS 305/1, *et seq*), or state and federal law that protects certain drug and alcohol records (20 ILCS 301/30-5, 42 USC 290dd-3 and 290ee-3, and 42 CFR Part 2).

_____, 2008

ENTER

By Judge _____