

FILED
01-04-2024
Anna Maria Hodges
Clerk of Circuit Court
2023CV002394

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

SHARON KLECHA,
TODD REYNOLDS and
KATHERINE PRBYLSKI,
Individually, and on behalf of all other
similarly situated persons or entities,

Case No.: 23-CV-2394

Intentional Tort: 30106
Unclassified: 30703

Plaintiff,

v.

FROEDTERT MEMORIAL LUTHERAN
HOSPITAL, INC. and ABC INSURANCE CO.,

Defendants and Third-Party Plaintiffs,

v.

VERISMA SYSTEMS, INC.,

Third-Party Defendant.

STIPULATION FOR THE ENTRY OF A PROTECTIVE ORDER

WHEREAS Plaintiffs Sharon Klecha, Todd Reynolds, and Katherine Prbylski, Defendant Froedtert Memorial Lutheran Hospital, Inc., and Third-Party defendant Verisma Systems, Inc. (collectively, the “Parties”), as well as likely non-party witnesses, possess highly sensitive and confidential information that may be disclosed in responding to discovery requests or otherwise in this Litigation, and that must be protected in order to preserve their legitimate business and personal interests, and

WHEREAS some of the documents and information relevant to the claims and defenses asserted in this Litigation may contain protected health information (“PHI”), as that term is defined under the Health Insurance Portability and Accountability Act of 1996

(“HIPAA”) and the associated regulations, which may only be disclosed subject to the strictures of HIPAA and other state and federal statutes and regulations; and

WHEREAS the Parties have, through counsel, stipulated to the entry of this Protective Order, to prevent unnecessary or unlawful dissemination or disclosure of such highly sensitive and confidential information, during the course of discovery or otherwise.

THEREFORE, THE PARTIES STIPULATE that the following may be entered as the Order of the Court without further notice:

**PROTECTIVE ORDER CONCERNING
CONFIDENTIAL INFORMATION AND PROTECTED HEALTH INFORMATION**

I. GENERAL CONFIDENTIALITY PROVISIONS

Definitions

1. The following definitions shall apply to this Protective Order:
 - (a) The term “Confidential Information” shall mean information that the Designating Party reasonably believes will disclose confidential and nonpublic technical, commercial, financial, personal, or business information that would provide others with an unfair competitive or improper advantage. Confidential Information also means PHI, or private or personal information which, if disclosed, would violate the privacy rights of that individual. Confidential Information may include documents or things produced in this Litigation (during formal discovery or otherwise), information produced by non-parties, responses to discovery requests, and information or items disclosed during depositions, hearings, or at trial. Information originally designated as “Confidential Information” shall not retain that status after any ruling by the Court denying such status to it.

(b) The term “Designating Party” shall mean the party designating information as Confidential Information under this Protective Order, and shall include non-parties.

(c) The term “Litigation” shall refer to the above-captioned lawsuit between the Parties, and shall include all related appellate proceedings.

(d) The term “Receiving Party” shall mean the party to whom Confidential Information is produced or disclosed.

Designation of Confidential Information

2. Each Designating Party who produces, discloses any information, or identifies information produced or disclosed by others, that it believes constitutes Confidential Information shall cause it to be designated as such. In designating Confidential Information, the Designating Party shall mark the item or each page of a document “Confidential” or “Highly Confidential-Attorneys’ Eyes Only,” or, if the Confidential Information was produced or disclosed by others, notify all Receiving Parties in writing to complete such marking.

(a) Confidential Information may be designated as “Highly Confidential-Attorneys’ Eyes Only” when, in the reasonable judgment of the Designating Party, the information is Confidential Information, but is extremely sensitive in nature, including, but not limited to, customer identification, confidential business plans, and financial, revenue, pricing, marketing, competitive, technical and research information relating to the Designating Party or the Designating Party’s products or services or planned products or services.

(b) When Confidential Information contained in documents or things are produced, the documents or things shall be designated as “Confidential” or “Highly Confidential Attorneys’ Eyes Only” by the Designating Party before production to the Receiving Party.

(c) When documents or things are made available for inspection, they may be collectively designated as “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” for purposes of the inspection, by letter or otherwise, without marking each document or thing “Confidential” or “Highly Confidential-Attorneys’ Eyes Only.” Once specific documents have been selected for copying, any documents containing confidential information may then be marked “Confidential” or “Highly Confidential Attorneys’ Eyes Only” after copying but before delivery to the party who inspected and selected the documents. There will be no waiver of confidentiality by the inspection of confidential documents before they are copied and marked “Confidential” pursuant to this procedure.

(d) Portions of depositions may be designated “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” if they are designated as such at the time the deposition is taken or within 30 days after the deposition transcript is received by the Designating Party or its counsel. Every attempt will be made to designate portions of the deposition as “Highly Confidential-Attorneys’ Eyes Only” at the time the deposition is taken.

(e) In the case of electronically stored information (“ESI”) produced in native file format, designation shall be made by placing the legend “Confidential” or

“Highly Confidential-Attorneys’ Eyes Only” on the face of the CD or other medium on which the ESI is produced, or by inserting the designation electronically if the same can be done without obscuring or compromising the document contents or affecting the metadata fields. If the Receiving Party makes a copy of a native file document containing Confidential Information on any form of portable media (*e.g.*, CD, DVD, thumb drive, or flash drive), the media on which such copies are made shall be labeled in accordance with this Protective Order.

3. The Parties recognize that during the course of this Litigation, Confidential Information that originated with or is maintained by a non-party may be produced or disclosed. Such information may be designated by either the non-party producing or disclosing the Confidential Information or the Receiving Party as “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” and shall be subject to the restrictions contained in this Protective Order.

4. Except for testimony, documents, and things disclosed in open court, in the event any Designating Party produces or discloses Confidential Information that has not been correctly designated, the Designating Party may redesignate the information to the same extent as it may have designated the information before production, by a subsequent notice in writing specifically identifying the redesignated information. The Parties shall treat such information in accordance with this Protective Order, and shall undertake reasonable efforts to correct any disclosure of such information contrary to the redesignation. No proof of error, inadvertence, or excusable neglect shall be required for such redesignation.

Disclosure of the Confidential Information

5. Information designated “Confidential” may be disclosed only to the following:

(a) In-house and outside counsel, their legal support personnel, and those persons specifically engaged for the limited purpose of making photocopies of documents or preparing documents for production.

(b) Independent consultants or experts and their staff, not employed by or affiliated with a Party, who are retained either as consultants or expert witnesses for the purpose of this Litigation.

(c) Employees and management of any Party who provide actual assistance in the conduct of this Litigation, but only to the extent necessary to allow them to provide that assistance.

(d) Any person who authored, reviewed, or received the Confidential Information prior to the initiation of this Litigation.

(e) The Court and Court personnel, and official court reporters to the extent that Confidential Information is disclosed at a deposition or court session which they are transcribing.

(f) The list of persons to whom Confidential Information may be disclosed identified in this Paragraph 5 may be expanded or modified by mutual agreement in writing by counsel for the Parties without the necessity of modifying this Protective Order.

(g) Information designated as “Highly Confidential-Attorneys’ Eyes Only,” shall be disclosed only to those persons described in Paragraphs 5(a), (b) or (e), or as agreed in accordance with Paragraph 5(f).

USE AND CONTROL OF CONFIDENTIAL INFORMATION

6. All information designated “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” shall be used by its recipient solely for the purposes of this Litigation and not for any business, competitive, or other purpose, or in any other litigation or action, whether presently filed or filed in the future, unless otherwise stipulated in writing by the Designating Party.

7. If Confidential Information is contained in trial or hearing testimony, the Designating Party may within five court days of the testimony petition the Court to designate the testimony as Confidential Information and to seal the transcript of same. All Parties and individuals subject to the terms of this Protective Order shall treat such testimony in accordance with this Protective Order, pending the Court’s decision with respect to designation and sealing. If a Party does not oppose the Designating Party’s petition (or otherwise challenge the designation pursuant to Paragraph 16) and the Court does not order the testimony sealed, then the Parties and individuals subject to the terms of this Protective Order shall remain bound to this Order in all respects, except to the use and treatment of the information at issue in open court and subsequent court filings. If, however, a party opposes the Designating Party’s petition (or otherwise challenges it pursuant to Paragraph 16) and the court does not order the testimony sealed, then all parties and individuals subject to the terms of this Protective Order will have the same

rights to use the testimony as any member of the public. If the time to petition the court to seal the transcript has expired without a petition being filed, all parties and individuals subject to the terms of this Protective Order will have the same rights to use the testimony as any member of the public.

8. In the event a Party files any pleadings, motions, or other papers with the Court disclosing Confidential Information – other than PHI the filing of which is addressed in Section II below - and does not seal or restrict that filing to the Parties, the filing party shall disclose only such information as necessary to support its motion, or give advance notice to the Designating Party prior to filing so that the Designating Party may move to seal the Confidential Information prior to its filing with or use in Court. In such cases where the Confidential Information is publicly filed with the Court without any or sufficient advanced notice, the Designating Party may within five court days of the filing move the Court to seal or restrict the filed Confidential Information. The Parties shall treat all Confidential Information that is filed with the Court in accordance with this Protective Order, pending the Court's decision with respect to sealing. If the filing Party does not oppose the Designating Party's motion (or otherwise challenge the designation pursuant to Section 16), then the Parties and individuals subject to this Protective Order shall remain bound to this Order in all respects, except as stated in the Court's decision on the motion. If, however, a Party opposes the Designating Party's Motion (or otherwise challenges the confidentiality designation pursuant to Section 16) and the Court does not order the record sealed, then all parties and individuals subject to the terms of this Protective Order will have the same rights to use the Confidential Information as any

member of the public. If the time to move the Court to seal the record has expired without a motion being filed, all Parties and individuals subject to the terms of this Protective Order will have the same rights to use the record as any member of the public.

9. No person designated in accordance with Paragraphs 5(b), (c), and (f) above shall be provided with access to Confidential Information without first signing an Acknowledgement of Protective Order in the form attached as Exhibit 1 (“Acknowledgment”). Counsel for the party obtaining the Acknowledgments shall maintain a file of all signed, original Acknowledgments.

10. Any Party may disclose or access its own Confidential Information in any manner that it considers appropriate, and without the requirement of signing the Acknowledgement.

11. No information may be withheld from discovery on the basis that the information requires greater protection than that afforded by this Protective Order, unless the Party claiming the need for greater protection moves for and obtains an order for such special protection from the Court.

12. Receiving Parties shall keep all Confidential Information received from others in a secure area to prevent disclosure of Confidential Information to persons not authorized under this Protective Order, including but not limited to protecting or encrypting access to ESI.

Duration of Order. Objection, Modifications

13. This Protective Order shall remain in full force and effect until modified, superseded, or terminated by order of this Court, which may be entered pursuant to agreement

of the Parties. This Protective Order shall continue in effect after termination of this Litigation and continue to be binding upon all persons to whom Confidential Information is disclosed.

14. At the end of this Litigation (including all appeals and the expiration of time for any further appeals), the Designating Party may demand that the Receiving Party either return to the Designating Party (at the Designating Party's expense) or destroy (at the Designating Party's expense) all Confidential Information received from the Designating Party within 30 days of the demand. Where Confidential Information is incorporated into documents, including, without limitation, drafts and final pleadings and briefs, attorney working files, and witness folders, or has been annotated, such Confidential Information may, at the option of the Receiving Party, be certified as destroyed in lieu of return or retained securely and only by counsel of record for so long as, and to the extent that, applicable privileges and other nondisclosure rights are asserted and maintained. Confidential Information stored on non-removable media (e.g., documents maintained electronically in litigation databases or stored on computer hard drives) shall be permanently deleted from all such media by the Receiving Party and certified as such by counsel of record.

15. If the Receiving Party learns that Confidential Information is disclosed to or comes into the possession of any person other than in the manner authorized by this Protective Order, the Receiving Party responsible for the disclosure must immediately inform the Designating Party of all pertinent facts relating to such disclosure and shall make reasonable efforts to retrieve the Confidential Information and prevent its disclosure by each unauthorized person who received such Confidential Information.

16. Any Receiving Party may at any time request that the Designating Party remove the “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” designation on any information produced. Such request shall be served on counsel for the Designating Party, and shall particularly identify the designated Confidential Information that the Receiving Party contends should not be designated as confidential and the reasons supporting its contention. If the Designating Party does not agree to remove the “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” designation, then the Receiving Party may file a motion to challenge the designation. On such a motion, the burden of demonstrating that the information is Confidential Information shall be on the Designating Party. The Parties shall continue to treat all information designated as Confidential Information consistent with the terms of this Protective Order until the Court issues its decision on any motion under this paragraph.

Disclosure of Confidential Information in Other Actions

17. In the event that a Receiving Party receives a subpoena related to another action that seeks the production of Confidential Information, the Receiving Party shall, within five calendar days, provide notice to the Designating Party in writing. To the extent permitted by law, the Receiving Party shall not produce the requested Confidential Information for at least ten days from the date the Receiving Party receives the subpoena, and shall cooperate fully with the Designating Party.

II. PROTECTED HEALTH INFORMATION

18. In accordance with the requirements of the regulations promulgated under HIPAA, specifically 45 C.F.R. § 164.512(e)(1)(ii)(B) & (v), the Court hereby further institutes

a HIPAA QUALIFIED PROTECTIVE ORDER, as that term is defined in the regulations, and requires for information obtained by discovery requests that all Parties be:

(a) prohibited from using or disclosing PHI for any purpose other than this Litigation; and

(b) required to return to the Disclosing Party or destroy all PHI (including all copies made) at the end of the litigation. (“End of the litigation” is not defined by HIPAA but should be understood to include the time for all appellate proceedings at any level or the expiration of the time to commence such further appellate proceedings without appeal).

19. Based upon this Order and commencing immediately from the date of this Order, all Parties shall COMPLY with all applicable federal and state laws and regulations regarding the use and disposition of PHI, and are hereby AUTHORIZED and ORDERED to receive, request, use, or disclose PHI in response to any and all discovery requests and deposition notices, at any time in the course of this Litigation, including any applicable appeals, to the extent and subject to the conditions outlined in this Order.

20. Based upon this Order and commencing immediately from the date of this Order, all covered entities, as that phrase is defined in 45 C.F.R. § 160.103, and their business associates are authorized to produce or disclose PHI in response to any and all discovery requests and deposition notices, at any time in the course of this Litigation, including any applicable appeals, to the extent and subject to the conditions outlined in this Order.

Interrogatories, Requests for Production or Copies, & Expert Communications

21. In addition to the foregoing, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of compliance with HIPAA, without waiver of any right to prepayment of costs or

any other appropriate objection or privilege that may be timely asserted, the attorneys, employees, agents, and designees of each Party or Party's legal counsel of record and other covered entities or their business associates in this Litigation are expressly and specifically AUTHORIZED and ORDERED to:

(a) respond to valid Requests for Production or Interrogatories served pursuant to the applicable law in the Litigation seeking PHI; and

(b) respond to each one of that Party's own experts who requests, either orally or in writing, PHI for purposes of reviewing the Litigation in whole or in part, whether the expert is a consulting or trial expert and whether the expert is considered retained for compensation or non-retained, by disclosing and providing such requested PHI.

22. In compliance with both HIPAA regulations and any applicable state law not pre-empted by HIPAA, the authorization and Order set forth in this Paragraph expressly includes PHI concerning psychological and mental health records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases, if so requested. The command of the Court in this Paragraph is a separate authorization for use or disclosure of PHI that is in addition to, and potentially inclusive of, the use and disclosures authorized under the HIPAA Qualified Protective Order set forth in Paragraphs 18-20 above.

Depositions

23. In addition to the foregoing, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of compliance with HIPAA, without waiver of any right to prepayment of costs, fees, and expenses, or any other appropriate objection or privilege that may be timely asserted,

each deponent duly noticed for deposition in the Litigation, including but not limited to a Party, Party representative, expert witness, or fact witness, is expressly and specifically AUTHORIZED and ORDERED to use or to disclose to the attorneys, employees, agents, and designees of each Party or each Party's legal counsel and other covered entities in this Litigation the PHI of a Party or actual or putative class member that is responsive to deposition questions or a valid subpoena duces tecum at such duly noticed deposition in the Litigation. In compliance with both HIPAA regulations and any applicable state law not pre-empted by HIPAA, the authorization and Order set forth in this Paragraph expressly includes PHI concerning psychological and mental health records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases, if so requested. The command of the Court in this Paragraph is a separate authorization for use or disclosure of PHI that is in addition to, and potentially inclusive of, the use and disclosures authorized under the HIPAA Qualified Protective Order set forth in Paragraphs 18-20 above.

Judicial Proceedings

24. In addition to the foregoing, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of compliance with HIPAA, without waiver of any right to prepayment of costs, fees, and expenses or any other appropriate objection or privilege that may be timely asserted, all witnesses duly appearing at, or subpoenaed for, any judicial proceeding related to this Litigation, including but not limited to trial, are specifically and expressly AUTHORIZED and ORDERED to use and disclose the PHI of a Party or actual or putative class member in any form at such judicial proceeding. In compliance with both HIPAA regulations and any

applicable state law not preempted by HIPAA, the authorization and Order set forth in this paragraph expressly include PHI concerning psychological and mental health records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases, if so requested. The command of the Court in this Paragraph is a separate authorization for use or disclosure of PHI that is in addition to, and potentially inclusive of, the use and disclosures authorized under the HIPAA Qualified Protective Order set forth in Paragraphs 18-20 above.

25. In addition to the foregoing, pursuant to 45 C.F.R. § 164.512(e)(1)(i) and for purposes of compliance with HIPAA, without waiver of any right to prepayment of costs, fees, and expenses or any other appropriate objection or privilege that may be timely asserted, each Party is expressly and specifically **AUTHORIZED** and **ORDERED** to file any pleadings, motions, exhibits, or other papers with the Court containing PHI, but only if the PHI is redacted from the pleading, motion, or paper, or such filing is sealed or restricted to the Parties and the Court. In compliance with both HIPAA regulations and any applicable state law not pre-empted by HIPAA, the authorization and Order set forth in this Paragraph expressly includes PHI concerning psychological and mental health records, disability status and records, substance abuse and treatment history, and HIV status, as well as records concerning other sexually transmitted diseases, if so requested. The command of the Court in this Paragraph is a separate authorization for use or disclosure of PHI that is in addition to, and potentially inclusive of, the use and disclosures authorized under the HIPAA Qualified Protective Order set forth in Paragraphs 18-20 above.

Court Reporter, Photocopying, & Other Designated Service Providers of a Party

26. Pursuant to 45 C.F.R. § 164.512(e)(1)(i) and in compliance with HIPAA, without waiver of any right to prepayment of costs or other appropriate objection or privilege that may be timely asserted, any person or entity authorized or ordered above to use or disclose PHI is expressly and specifically AUTHORIZED and ORDERED to do so with, to, or before any court reporter service, videography service, translation service, photocopy service, document management service, records management service, graphics service, or other such litigation service, designated by a Party or Party's legal counsel in this case. The protections and requirements of Paragraphs 18-20 above specifically apply to any such service so designated. Each Party or the Party's legal counsel is charged with giving notice of the obligations imposed by this Order to any such service the Party or counsel so designates and further charged with obtaining advance consent of such service to comply fully with this Paragraph. Upon such consent, the service will be deemed to have been voluntarily submitted to the Court's jurisdiction during the pendency of this Litigation for purposes of enforcement of this Paragraph, including but not limited to the imposition of such sanctions, monetary or otherwise, as may be appropriate for any non-compliance.

Business Associate Agreements

27. Except for business associate agreements (within the meaning of the HIPAA regulations) entered into by a Party or a Party's legal counsel for purposes of satisfying the requirements of this Order, the uses and disclosures of PHI authorized under this Order are separate from, and not to be deemed subject to, any business associate agreement that has been or will be executed by any Party, any Party's legal counsel, or any Designating Party. No

use or disclosure made to a Party pursuant to this Order shall be deemed to require execution of a business associate agreement within the meaning of the HIPAA regulations. The intent of this Order is that the uses and disclosures made pursuant to it should not be subject to such business associate agreements or to any requirement for such agreements under the HIPAA regulations. Such agreements should be construed as inapplicable to any uses or disclosures made pursuant to this Order and, therefore, as limited only to uses and disclosures of PHI outside of this Order.

III. OTHER PROVISIONS

Clawback

28. The inadvertent production of any document or information in this Litigation by any Party or non-party, that a Party or non-party later claims should have been withheld on grounds of a privilege, including but not limited to attorney-client privilege or the work product doctrine (collectively referred to hereinafter as an “Inadvertently Produced Privileged Document”) will not be deemed to waive any privilege or work product protection. A Party or non-party may request the return of any document or information that it inadvertently produced by identifying the Inadvertently Produced Privileged Document and stating the basis for withholding such document from production, within 10 days of discovering the inadvertent production. If a Party or non-party requests the return of such an Inadvertently Produced Privileged Document then in custody of one or more Parties, the possessing Parties shall within five business days destroy or return to the Party or non-party the Inadvertently Produced Privileged Document and all copies thereof and shall expunge from any other document or material

information solely derived from the Inadvertently Produced Privileged Document. After a document is destroyed or returned pursuant to this agreement, a Party may move the Court for an order compelling production of the document, but that Party may not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

No Waiver of Privileges

29. Production of documents and things shall not constitute a waiver of confidentiality, privilege or immunity from discovery as to such information.

Other Remedies

30. Nothing in this Protective Order shall prevent any Party or non-party from seeking additional relief from the Court.

Dated this 4th day of January, 2024.

CANNON & DUNPHY, S.C.

Attorneys for Plaintiffs

By: *s/Brett A. Eckstein*

Brett A. Eckstein, SBN 1036964

Edward E. Robinson, SBN 1025122

Julie A. Leary, SBN 1113385

von BRIESEN & ROPER, s.c.

Attorneys for Defendant Froedtert Memorial Lutheran Hospital, Inc.

By: *s/Kelly J. Noyes*

Susan E. Lovern, SBN 1025632

Kelly J. Noyes, SBN 1064809

Nicholas D. Castronovo, SBN 1085033

Christopher E. Avallone, SBN 1095465

HINSHAW & CULBERTSON LLP

Attorneys for Third-Party Defendant Verisma Systems, Inc.

By: *s/Molly K. Woodford*

David J. Hanus, SBN 1027901

Corey J. Swinick, SBN 1097530

Molly K. Woodford, SBN 1126884

ACKNOWLEDGMENT

I acknowledge that I have read the attached Protective Order entered by the Circuit Court of Milwaukee County in the case entitled *Sharon Klecha et. al. v. Froedtert Memorial Lutheran Hospital, Inc. et al*, Case No. 23CV2394, and understand that I am authorized to receive Confidential Information subject to that Protective Order. I agree to abide by the obligations and conditions of that Protective Order. I agree to submit to the jurisdiction of the Circuit Court of Milwaukee County for all disputes arising out of or relating to the Protective Order and/or the disclosure or receipt of Confidential Information under that Protective Order.

Dated this _____ day of _____

Signature

Printed Name

Company