

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

GENERAL ADMINISTRATIVE ORDER 17-4
STANDARD HIPAA PROTECTIVE ORDER

Effective January 2, 2018, all protective orders entered in the Law Division pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") shall conform to the attached standard and approved format. This order incorporates by reference the December 15, 2017 memorandum order and opinion issued by Circuit Court Judge John H. Ehrlich in *Shull v. Ellis*, 15 L 9759, and the transcripts of proceedings in that matter dated August 8, October 11, November 13, and November 28, 2017.

Pursuant to Law Division General Administrative Order 03-4, all motions for HIPAA protective orders shall be presented on all motion calendars as "Routine Motions," with proper notice, and must be specifically labeled and contain a specific reference to the HIPAA statute.

Objections to the entry of HIPAA protective orders shall be submitted in accordance with the routine motion rules and standing orders of motion judges.

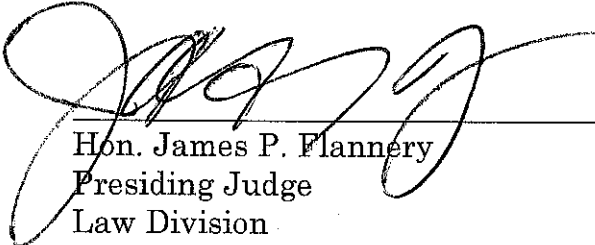
Law Division General Administrative Orders 12-1 and 17-3 are hereby vacated and replaced with this Law Division General Administrative Order 17-4.

IT IS HEREBY ORDERED THAT this order is effective as of the date indicated below and will be spread on the records of this court.

JUDGE JAMES P. FLANNERY

DEC 15 2017

Circuit Court-1505



Hon. James P. Flannery
Presiding Judge
Law Division

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

Plaintiff,)
)
v.) No. _____
)

Defendant.)

HIPAA PROTECTIVE ORDER

This court explicitly finds that this court order is necessary to:

1. Protect a party's right to privacy as guaranteed by article I, section 6 of the Illinois constitution for each party in this lawsuit;
2. Ensure the parties' compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying rules and regulations governing the disclosure, maintenance, use, and disposal of protected health information (PHI), *see generally* 45 C.F.R. 160.103 & 160.501,
3. Require covered entities, *see* 45 C.F.R. 160.103, to disclose a party's PHI for use in this litigation without a separate disclosure authorization;
4. Permit insurance companies to receive PHI or what would otherwise be considered PHI from covered entities, business associates, and parties in litigation and to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI in compliance and conformity with all applicable federal laws and regulations and the Illinois Insurance Code and its accompanying rules and regulations; and
5. Further the interest of the State of Illinois in regulating the business of insurance.

A party disclosing PHI explicitly stipulates that she or he:

1. Read this court order before signing their name to be bound by it;
2. Discussed the contents of this court order with their attorney of record in this litigation and had the opportunity to ask questions;
3. Was informed of and fully understands the consequences of the entry of this court order;
4. Freely and without reservation stipulates to the entire contents of this court order; and
5. Understands that by refusing to consent to the contents of this order, the court may impose sanctions up to and including dismissal of the complaint.

Based on these findings and stipulations, this court orders the following:

1. The PHI of any party in this lawsuit may not be disclosed for any reason without that party's prior written consent and an order of this court.

2. A party that has disclosed PHI and agreed (as indicated by signature) to the entry of this court order explicitly waives the right to privacy over the disclosed materials but only to the extent provided in this court order. The only disclosures explicitly waived and expressly permitted are those:

A. To insurance companies to disclose, maintain, use, and dispose of PHI or what would otherwise be considered PHI to comply and conform with current and future applicable federal and state statutes, rules, and regulations for purposes including:

1. Reporting; investigating; evaluating, adjusting, negotiating, arbitrating, litigating, or settling claims;
2. Compliance reporting or filing;
3. Identifying and reporting criminal or unlawful conduct;
4. Required inspections and audits;
5. Legally required reporting to private, federal, or state governmental health or medical insurance organizations, including, but not limited, to the Centers for Medicare and Medicaid Services (CMS);
6. Rate setting and regulation;
7. Statistical information gathering;
8. Underwriting, reserve, loss, and actuarial calculation;
9. Drafting policy language;
10. Workers' compensation; and
11. Determining the need for and procuring excess or umbrella coverage or reinsurance;

B. Ordered by this or another court or arbitral body or by subpoena for purposes of subrogation, reimbursement, or payment of liens arising out of or related to this lawsuit; and

C. Necessary to comply with any other federal or state laws, rules, or regulations, but only with the party's express consent and entry of an appropriate court order.

3. Any covered entity over which this court has jurisdiction that fails or refuses to disclose PHI in accordance with this court order is subject to all sanctions authorized by the Code of Civil Procedure and the Illinois Supreme Court rules.

4. A party to this lawsuit may provide PHI to an undisclosed consulting expert or controlled expert witness as defined in Illinois Supreme Court Rule 213(f)(3), but only after receiving acknowledgement that each such expert or witness agrees to be bound by the terms of this order.

5. Immediately after the conclusion of this lawsuit, as indicated by a court-entered order of dismissal, all parties and other persons or entities subject to this court order possessing PHI shall by agreement either return it to the party or non-party about whom it concerns or their attorney of record in this lawsuit or destroy it by shredding, pulverizing, melting, incinerating, or degaussing. This provision does not apply to insurers who possess what would otherwise be considered PHI under HIPAA, but only to the extent as limited in paragraph 2.

6. No parties or their attorneys, agents, or representatives are permitted to request, obtain, or disclose PHI or any other type of medical bills, records, or related information other than through the formal discovery procedures authorized by the Code of Civil Procedure, Illinois Supreme Court rules, and orders of this court.

7. The parties are prohibited from including or attaching PHI to any document filed with the Clerk of the Circuit Court. PHI necessary for the court's consideration of any matter must be provided separately.

8. This court retains jurisdiction to enforce the terms of this order after the conclusion of this litigation.

Printed Name

Dated: _____

Signed by Plaintiff / Legally Designated Representative
/ Other (circle one)

Dated: _____

Counsel for Plaintiff

Circuit Court Judge