

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
(EAST ST. LOUIS)

CASE NO.: 3:12-CV-00114-DRH-SCW

ALEX WALKER,)
)
 Plaintiff,)
v.)
)
THREE ANGELS BROADCASTING)
NETWORK, INC., and TOMMY SHELTON)
)
 Defendants.)
_____)

PLAINTIFF’S UNOPPOSED MOTION FOR HIPAA QUALIFIED PROTECTIVE ORDER AND ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION

COMES NOW Plaintiff Alex Walker, by and through undersigned counsel, and files this Unopposed Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and 45 C.F.R. § 164.512 (e) (1), and as grounds therefore state as follows:

1. Plaintiff has alleged damages which place at issue, or which are reasonably anticipated to become at issue, or which are reasonably anticipated to become at issue, certain protected health information (“PHI”) within the meaning of the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)

2. Generally speaking, HIPAA provides more wide-ranging privacy protections for protected health information than previously existed. Accordingly, it prohibits the disclosure or use of a persons’ PHI in litigation or other proceeding unless satisfactory safeguards are in place to the limit the use and disclosure of the PHI. See 45 C.F.R. §164.512 (e)

3. Accordingly, 45 C.F.R. § 164.512 (e) (1) (ii) (B) provides that HIPAA's privacy standards are satisfied by, *inter alia*, by issuing a subpoena accompanied by a HIPAA "Qualified Protective Order" HIPAA further provides in 45 C.F.R. §164.512 (e) (1) (v) that such order must:

- 1) prohibit the parties from using or disclosing the PHI for any purpose other than the subject litigation; and
- 2) require that the PHI (including all copies made) be destroyed, or returned to the health care provider from whom the PHI was obtained, at the conclusion of the litigation.

4. Plaintiff therefore requests that this Court enter a HIPAA Qualified Order to enable the parties to obtain records from medical providers and others in possession of Plaintiff's PHI in accordance with HIPAA's requirements, whether said request is made by authorization or subpoena.

5. In addition, because no subpoena is involved, the regulations of HIPAA make no specific provision to allow a party or a party's counsel who receives PHI to re-disclose such records in response to requests for production of documents served pursuant to Federal Rule of Civil Procedure 34.

6. The regulations also make no express provision for persons duly noticed for deposition in this litigation, particularly parties who are not subject to a subpoena, to use or disclose PHI in response to deposition questions or a *duces tecum* or to an expert.

7. Furthermore, there is no express provision in HIPAA for disclosure or use of PHI at trial or in other judicial proceedings, including appeal, or to persons necessarily involved in such proceedings or in preparing for such proceedings, including but not limited to: court reporter services, videography service, translation services, photocopy services, document

management services, records management services, graphics services or other such litigation services, designated by a party or a party's legal counsel in this case (collectively "Litigation Services").

8. Where there is no express provision, the HIPAA regulations provide generally under 45 C.F.R. §164.512 (3) (1) (i) that the Court may make additional orders to authorize use and disclosure of PHI. Specifically, "[a] covered entity may disclose protected health information in the course of any judicial or administrative proceeding... [i]n response to an order of a court or administrative tribunal, provided that the covered entity discloses the protected health information expressly authorized by such order." Id.

9. Plaintiff therefore requests that the parties and their counsel be authorized and ordered to use and disclosure protected health information that is subject of this lawsuit to, or with, any of the following: the party's experts concerning the case or claim; other parties and their counsel in response to requests for copies, Interrogatories and Request for Production; and in any judicial proceeding related to this litigation, including but not limited to trial and appeal.

11. Significantly, THE PROPOSED ORDER DOES NOT AUTHORIZE ANY DISCLOSURE OR DISCOVERY OUTSIDE OF THE NORMAL DISCOVERY PROCEDURES, INCLUDING THE RIGHT TO OBJECT TO THIRD-PARTY SUBPOENAS FOR PRODUCTION. Therefore, it gives no substantive right to seek information outside the established discovery channels and procedures of this litigation. It simply accommodates such established procedures with HIPAA's mechanism for judicial proceedings and subpoenas.

12. A proposed Order is attached hereto as Exhibit 1.

12. Plaintiff's counsel has conferred with counsel for Defendant Three Angels Broadcasting Network, Inc., who agrees to the proposed Order attached hereto as Exhibit A. Defendant Tommy Shelton is incarcerated and unavailable for conference.

WHEREFORE, Plaintiff ALEX WALKER respectfully requests that this Court enter a HIPAA Qualified Protective Order and Order to Disclose Protected Health Information substantially in the form attached as Exhibit "1" to this motion.

Dated: May 8, 2012.

Respectfully submitted,

By: /s/Jessica D. Arbour

Jessica D. Arbour

(admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Jessica D. Arbour

