

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(Western Division)**

ROSIE D., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	01-30199-MAP
MITT ROMNEY, et al.,)	
)	
Defendants.)	
)	

**JOINT MOTION
TO AMEND PROTECTIVE ORDER**

The parties in the above-captioned matter hereby move jointly for an amendment to the Protective Order dated January 9, 2002 and the Amended Protective Order dated October 3, 2003, subject to the Supplemental Judicial Findings approved by the Court on July 30, 2003. A proposed form for the requested amended protective order is attached as Exhibit A hereto. As grounds for this motion, the parties state as follows:

1. On January 9, 2002, the Court entered the original protective order in this matter as a means of protecting the privacy and identities of the named plaintiffs and class members during the course of discovery and trial. The plaintiffs and members of the class are children with behavioral health disorders who are Medicaid recipients. As amended on October 3, 2003, the order also protects these individuals' families.

2. On November 14, 2003, the Court (Neiman, U.S.M.J.) ordered the defendants to respond to certain interrogatories propounded by the plaintiffs. Those interrogatories called for the production of information on behalf five health maintenance

or managed care organizations (“MCOs”) that contract with the defendants to provide behavioral health services to the named plaintiffs and the class. Among other things, the interrogatories called for the production of rate and cost information from the MCOs. The MCOs consider this rate and cost information to be proprietary commercial information and requested that the existing protective order be amended to protect unnecessary public disclosure of this rate information.

3. In response to the MCOs’ request, the parties negotiated the form of amended protective order attached hereto as Exhibit A, which is narrowly tailored to meet the concerns of the MCOs but avoid unnecessary restriction of non-proprietary information produced by the MCOs.

WHEREFORE, the parties respectfully request that the Court enter an amended protective order in the form of Exhibit A attached hereto.

The State Officials,
By their Attorney,

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Dated: December __, 2003

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN SECTION**

ROSIE D., et al.,

Plaintiffs

v.

MITT ROMNEY, et al.,

Defendants

Civil Action No.
01-30199-MAP

(Proposed) AMENDED PROTECTIVE ORDER

After due consideration of the request by the parties and third-party managed care organizations (“MCOs”), from whom materials are being produced by the defendants in this matter, for a protective order to govern the disclosure and access to confidential documents as well as the treatment and maintenance of confidential documents by any party or third party, the Protective Order dated January 9, 2002 and the Amended Protective Order dated October 3, 2003 are hereby amended and it is hereby Ordered and Adjudged, subject to the Supplemental Judicial Findings approved by the Court on July 30, 2003:

1. The following documents and information shall be deemed "Confidential Information" and be governed by this Protective Order: all documents and records which include the full actual names (but not initials) and all photographs and videotapes which depict the faces of the individual plaintiffs, members of the plaintiff class, their families,

or any non-class member, or other personally-identifiable information about the plaintiffs, class members, their family members, or non-class members.

2. In all pleadings filed with the Court, the parties will refer to the plaintiffs and the parents or guardians of the plaintiffs, by their first name and last initial. The parties shall ensure that only the first name and last initial of any plaintiff, or parent or guardian of a plaintiff, are readable in any document filed with the Court. Separate provision may be made for lengthy documents submitted in an evidentiary hearing.

3. Subject to the rules of evidence, the terms and conditions of this protective order, and any other orders of the Court, “Confidential Information” may be used in a pleading, filing, hearing, trial, or other proceeding in the matter of Rosie D. et al. v. Romney, et al., C.A. No. 0130199-MAP, without being sealed. However, the party who produced the Confidential Information may at the time of such proposed submission request that the material be sealed by the Court. The person, who is the subject of such confidential material, or that person's legal guardian, may authorize its use for any other purpose. Any Confidential Information used in any court document or proceeding shall not lose its confidential status through such use, unless the Court orders otherwise.

4. Rate information contained in documents or other materials produced by a MCO via the defendants that have been marked or may be marked as “Highly Confidential” by the producing party shall be deemed hereunder as “Proprietary Information.” Non-rate information contained in such documents and materials shall not be deemed to be Proprietary Information.

5. Subject to the rules of evidence, this protective order, and any other orders of the Court, the parties shall use Proprietary Information in potentially public proceedings and filings only as follows:

- (a) Proprietary Information may not be used in a pleading, filing, hearing, trial, or other proceeding in the matter of Rosie D. et al. v. Romney, et al., C.A. No. 0130199-MAP, without providing the producing party with seven business days written notice, by both facsimile and electronic means to the identified counsel of the producing party, of such intended use.
- (b) The producing party shall then have two business days to request in writing that the notifying party submit such Proprietary Information only under seal.
- (c) If the notifying party does not agree within 2 business days to submit such information under seal, the producing party shall be entitled to petition the Court for an order that such materials be sealed.
- (d) While any petition to the Court for such an order is pending, any Proprietary Information that would be subject to such an order shall not be used in any fashion that would identify the MCO providing such information and, if to be contained in a document to be filed publicly, such information shall be redacted from any such document.

6. All Confidential Information and Proprietary Information shall be controlled and maintained in a manner that precludes access by any person not entitled to access under this Order. Confidential Information and Proprietary Information shall be disclosed only to the following persons:

- (a) counsel, including paralegal, investigative, secretarial, and clerical personnel who are engaged in assisting such counsel in the above-entitled action;
- (b) any independent outside expert or consultant, and employees and assistants under the control of such an expert or consultant, who is engaged by counsel in this litigation, whether or not such expert is paid directly by a party;
- (c) any employee of a party who is requested by counsel for such party to work directly on the above-entitled action;
- (d) any deposition or trial witness;
- (e) any person who authored or received the particular confidential material sought to be disclosed to that person;
- (f) any court or other reporter or typist recording or transcribing testimony;
- (g) the Court; or
- (h) managed care organizations or other MassHealth contractors that maintain records concerning members of the proposed plaintiff class, including the Massachusetts Behavioral Health Partnership and its employees, and other MassHealth-contracted managed care organizations and their employees, except that Proprietary Information shall not be disclosed to such persons.

Confidential Information and Proprietary Information shall not be disclosed to persons described in paragraphs 5(b), (c), (d), or (h) until such persons have been provided with a copy of this Order and have agreed to abide by and comply with the terms and provisions therein. Such agreement shall be in writing with respect to any Proprietary Information.

Should such person not agree to these conditions, the producing party and the party seeking to use such information may agree to an alternative method for preserving the confidential or proprietary nature of such information or may petition the court for an alternative method of protection.

7. This Order shall not prevent a party from applying to the Court for relief therefrom, or from applying to the Court for further or additional protective orders, or from agreeing to modification of this Order.

8. Upon conclusion of the above-entitled action, the provisions of this Order shall continue to be binding, and all Proprietary Information shall be returned to the MCO producing such information or destroyed in an appropriate manner with a certification to that effect to be provided to the MCO. This Order shall remain in force and effect until modified, superseded, or terminated by consent of the parties or by Order of this Court.

By the Court:

Dated: December __, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above d Joint Motion to Amend Protective Order was served upon all counsel of record by first-class mail on December ____, 2003.
