
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WALTER BENNETT, individually and on behalf of
all other similarly situated,

Plaintiffs,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 02-4993 (FLW)

SERENA THOMAS, Individually and as
Administratrix ad Prosequendum to the Estate
of CORNELL W. THOMAS, deceased,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3358 (FLW)

RICKY NEFFERDORF,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3411 (FLW)

JASON SMART-EL,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3413 (FLW)

DAVID WENNER,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3414 (JBS)

ANTONIO AGUILA

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3415 (JBS)

MARGARET REYNOLDS, individually as
Administratrix to the Estate of
DANIEL REYNOLDS, deceased,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3416 (FLW)

LEE BAILEY, *et al.*,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3417 (FLW)

LEE BAILEY, *et al.*,

Plaintiff,

vs.

CORRECTIONAL MEDICAL SERVICES, *et al.*,

Defendants.

Civ. No. 04-3417 (FLW)

PROTECTIVE ORDER

THIS MATTER having come before the Court on application of counsel for the defendants; and plaintiffs having not objected to the entry of this Order, and for good cause shown;

IT IS ON THIS ^{14th} day of ~~Oct~~ Nov. 15th 2005; *JBK*

ORDERED that the following procedures and restrictions shall apply to all information, documents and testimony produced, given or provided by the parties in the course of pre-trial discovery in the above-captioned action ("Action") as follows:

1. In connection with discovery proceedings in this Action, any party to this Protective Order may, by written notice to all parties, or by a statement on the record at a deposition, designate any non-public document, material or information as "PROTECTED CONFIDENTIAL MATERIAL" provided the party has a good faith belief that the designated document, material or information is entitled to protection from disclosure, in the manner set forth herein or by written agreement of the parties at any time. The provisions herein shall also apply to any non-party who provides testimony, documents or information in such discovery proceedings and who agrees to be bound by the terms of this Protective Order. References to a "party" or "parties" herein shall also include such non-parties.

2. All or any part of a document disclosed or produced herein may be designated as "PROTECTED CONFIDENTIAL MATERIAL." by any party by marking the words "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" or substantially similar language on the face of the document and on each separate part or component of the document, material or information.

3. The inadvertent production of any document, material or other information during discovery in this Action shall be without prejudice to any claim that such material is privileged under the attorney-client privilege or protected from discovery as work product, and no party shall be held to have waived any rights by such inadvertent production.

4. Any materials designated as "PROTECTED CONFIDENTIAL MATERIAL" or any information derived therefrom may only be disclosed or made available by counsel receiving such information to "Qualified Persons," who in the case of documents, material or information designated as "PROTECTED CONFIDENTIAL MATERIAL" are defined to consist solely of:

- a. the Court;
- b. counsel to the parties to this Protective Order, and the paralegal(s), clerical and secretarial staff employed by such counsel;
- c. court reporters;
- d. independent experts and/or advisors, not employed by any party during the normal course of such party's business, but consulted by counsel for such party solely in connection with this Action, whether or not retained to testify at trial;
- e. any other person as to whom the producing party agrees in writing.

5. It is specifically agreed and understood that materials designated as "PROTECTED CONFIDENTIAL MATERIAL" shall not be disclosed to persons or categories of persons other than those specifically enumerated in Paragraph 4.

6. Materials designated as "PROTECTED CONFIDENTIAL MATERIAL" shall be used solely by counsel in connection with the preparation for the prosecution and/or defense of this Action and any appeal thereof, and in accordance with the provisions of this Protective Order.

7. The parties shall take all necessary and appropriate measures to maintain the confidentiality of the documents or information and shall retain the documents, information or materials in a secure manner. Plaintiffs' counsel shall be responsible for ensuring that any person who obtains access to "PROTECTED CONFIDENTIAL MATERIAL" shall execute the form set forth in Exhibit A attached hereto along with a copy of this protective order before any documents marked "PROTECTED CONFIDENTIAL MATERIAL" are disclosed. Plaintiffs' counsel disclosing the material that has been designated as "PROTECTED CONFIDENTIAL MATERIAL" shall maintain the original copies of the Exhibit A forms. In the event documents marked "PROTECTED CONFIDENTIAL MATERIAL," or information derived therefrom, is discovered to have been disclosed to anyone other than the persons or categories of persons specifically enumerated in Paragraph 4, counsel for the plaintiffs shall produce true and correct copies of the executed Exhibit A forms within 5 days of a demand for same issued by counsel for CMS.

8. Any person who obtains access to "PROTECTED CONFIDENTIAL MATERIAL" under this Protective Order may make copies, duplicates, extracts, summaries or descriptions of the documents or information solely for the purposes of this litigation. All such copies, duplicates, extracts, summaries or descriptions shall be subject to the terms of this Protective Order to the same extent and manner as original documents.

9. Any unauthorized disclosure of documents or information designated as "PROTECTED CONFIDENTIAL MATERIAL" under this Protective Order shall not result in a waiver of the producing party's claim of confidentiality.

10. Nothing contained in this Protective Order shall preclude the use of information designated "PROTECTED CONFIDENTIAL MATERIAL" in an affidavit, motion, brief, memorandum or other document filed with the Court in connection with this Action, provided that it is necessary for use in connection with motions, conferences or other pretrial proceedings in this Action, and is properly marked and secured in accordance with this Protective Order. Any such information designated as "PROTECTED CONFIDENTIAL MATERIAL" shall be delivered to the Judge or Clerk under seal for in camera consideration. All documents required to be filed under seal by the terms of this Protective Order shall be placed in sealed envelopes or other sealed containers, which envelopes or containers shall be marked with the title and case number of this Action and shall bear a statement substantially in the following form:

CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER

This envelope contains documents which are filed under seal in this case pursuant to the Protective Order filed by this Court. This envelope or container is not to be opened nor the contents thereof displayed or revealed except to the individuals or entities designated in the above-referenced Protective Order, by consent of the parties, or in accordance with a further Order of the Court.

11. All documents filed under seal shall either be returned to counsel submitting it upon disposition of the motion, conference or other pretrial proceeding or it shall remain in the Court's file under seal. If any information designated as "PROTECTED CONFIDENTIAL MATERIAL" is used in an affidavit, motion, brief or memorandum, all portions of such affidavit, motion, brief or memorandum which contain, refer to, paraphrase, quote, describe or contain or relate to such information shall be treated as "PROTECTED CONFIDENTIAL MATERIAL" pursuant to the terms of this Protective Order.

12. With respect to depositions of any party, non-party or any person employed by, formerly employed by, or acting on behalf of any party to this Protective Order, may at deposition designate testimony of the deponent "PROTECTED CONFIDENTIAL MATERIAL" and request that the court reporter insert a statement regarding the confidentiality of the information into the deposition transcript. Each party shall have until ten (10) days after receipt of the deposition transcript within which to inform the other parties, in writing, that portions of the transcript are designated as "PROTECTED CONFIDENTIAL MATERIAL". No such deposition transcript shall be disclosed to any person other than the persons described in this

Protective Order and the deponent (and the deponent's counsel in the case of a separately represented non-party) during those ten (10) days, and no person attending such a deposition shall disclose the contents of the deposition to any person other than those described in the Protective Order during the said ten days. Upon being informed that certain portions of a deposition are designated as "PROTECTED CONFIDENTIAL MATERIAL" each party shall cause each copy of the transcript in its possession, custody or control to be so marked.

13. In the event that counsel for the party receiving documents, materials or information designated as "PROTECTED CONFIDENTIAL MATERIAL" objects to such designation of any or all of such items and intends to disclose any of those materials to the parties to this litigation, clients or client representatives, or to any other third-party not a party to this action, said counsel shall advise the producing party of the basis of the objection and the reasons therefore. If the producing party objects to the proposed disclosure, all the items shall be treated as confidential under this Protective Order pending a resolution of the parties' dispute, and it shall be the obligation of the party asserting the privilege (the "producing party") to arrange for a hearing before the Court with respect to the propriety of the designation.

14. Upon notice of the receiving party's intention to disclose documents, materials or information designated as "PROTECTED CONFIDENTIAL MATERIAL," the producing party may consent in writing to a limited disclosure of the material in question. Any such consent shall not constitute a waiver of any objection, claim of confidentiality or basis for a motion as to the propriety of the continued or expanded disclosure of the material in question.

15. Entering into, agreeing to and/or complying with the terms of this Stipulated Protective Order shall not:

- a. Operate as an admission by any party that any particular documents, material or information contained or reflect currently valuable trade secrets or propriety or commercial information; or
- b. Prejudice in any way the right of any party, at any time;
 - i. to seek a determination by the Court of whether any particular document, item or material or piece of information should be subject to the terms of this Protective Order; or
 - ii. to make an application to the Court for a determination of whether certain limited materials may be produced for ATTORNEYS EYES ONLY and to be produced only to counsel representing parties in this matter and to the exclusion of the named inmate plaintiffs, experts or any other third party. In the event that any such application is made the documents or materials in question may be either withheld from production or may be produced to counsel with the agreement that the materials in question will not be distributed or disclosed to any other persons pending the outcome of the Court's determination on the propriety of the designation as ATTORNEYS EYES ONLY.
 - iii. to seek relief on appropriate notice from any provision(s) of this Protective Order, either generally or as to any particular documents, item of material, or piece of information; or

iv. to seek further protection as to particular documents, materials, or pieces of information pursuant to Fed. R. Civ. P. 26(c).

16. Nothing contained in this Protective Order shall prohibit any person from disclosing any information designated as "PROTECTED CONFIDENTIAL MATERIAL" to any of the following:

a. Any governmental authority or agency pursuant to the valid exercise by any government authority or agency of the powers and authorities granted to it by law, provided that the producing party is given notice that said information will be produced in sufficient time to permit the producing party to challenge the production of said information in the appropriate legal forum; or

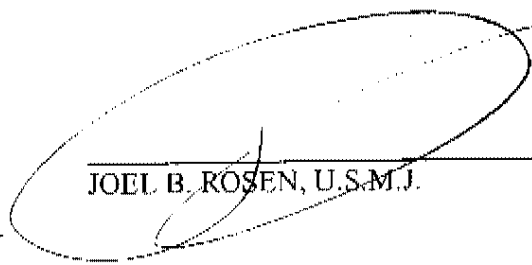
b. Any person or entity pursuant to the valid and legal use of compulsory process, including the exercise of subpoena powers, provided that the producing party is given notice that said information will be produced in sufficient time to permit the producing party to challenge the production of said information in the appropriate legal forum.

17. However, no person or party requested or compelled to produce such information pursuant to the valid of exercise by any government authority or agency of the powers and authorities granted to it by law, pursuant to the valid and legal use of compulsory process, including the exercise of subpoena powers, shall be required to refuse to produce said information if, in so doing, such person or party would subject itself to penalties or punishment including those for contempt of court.

18. All documents designated as "PROTECTED CONFIDENTIAL MATERIAL" in accordance with this Protective Order shall be returned to the producing party at the conclusion of this Action, or at the conclusion of other New Jersey hepatitis C lawsuits prosecuted by the plaintiffs' counsel in this case, whichever is later, or be destroyed. The "conclusion" of this Action means sixty (60) days following the exhaustion (or expiration of time for) appeal rights on all claims, the filing of a stipulated dismissal or the entry of a voluntary dismissal, or as may be determined by the Court.

19. This Protective Order shall remain in full force and effect after the termination of this litigation or until cancelled or otherwise modified by Order of this Court, or by written agreement of the parties.

Date: 11-15-05
~~10-14-05~~



JOEL B. ROSEN, U.S.M.J.

**THE UNDERSIGNED CONSENT TO
THE ENTRY OF THIS ORDER**

ARCHER & GREINER, P.C.
Attorneys for Defendants
Correctional Medical Services, Inc.,
Louis Tripoli, M.D., William Andrade, M.D.,
James J. Neal, M.D., James Ruman, R.N., Rock
Welch and Abu Ahsan, M.D.

By: Joel Schneider 10/13/05
JOEL SCHNEIDER, ESQUIRE/DATE

NJ ATTORNEY GENERAL'S OFFICE
Attorneys for Defendant, Devon Brown,
Commissioner, New Jersey Department of Corrections

By: [Signature]
DIANNE M. MORATTI, ESQUIRE /DATE

FELDMAN, SHEPHERD,
WOHLGELERNTER & TANNER
Attorneys for Plaintiffs

By: [Signature]
DANIEL WEINSTOCK, ESQUIRE /DATE

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EXHIBIT A

**LIMITED SPECIAL APPEARANCE AND AGREEMENT
FOR ACCESS TO CONFIDENTIAL DOCUMENTS AND INFORMATION**

I _____ hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned matter on the _____ day of _____, 2005. I understand the terms of the Court's Protective Order and under oath consent to be bound by the terms of the Protective Order as a condition to being provided access to confidential documents and information furnished by the parties to this action.

By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the purpose of enforcing the terms of the Court's Protective Order.

I hereby declare under the penalty of perjury under the laws of the United States of America that the above statements are true and correct.

(Name of recipient)

Dated: _____

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