

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

BIOMED HEALTH SOLUTIONS, LLC
d/b/a BIOMED SPECIALTY PHARMACY,

Plaintiff,

vs.

Case No. 2016-733-CB

AKHTAR QAZI,

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion for a HIPAA qualified protective order.
Defendant has not filed a response.

FILED
2016 JUL 28 AM 12:00
CLERK OF COURT
MACOMB COUNTY

I. Factual and Procedural History

Defendant is one of Plaintiff's former employees. When Defendant was hired in 2010 he allegedly signed a confidentiality and non-compete agreement. In 2014 Defendant changed his position with Plaintiff and signed a new employment agreement ("Agreement"). The Agreement contains an 18 month post-employment non-solicitation and non-competition provisions. In January 2015 Defendant resigned from Plaintiff, with an effective date of February 6, 2015. In its complaint, Plaintiff alleges that Defendant has since began working for one of its competitors in violation of the non-competition provision. While Plaintiff concedes that its competitor terminated Defendant upon learning of the non-competition provision, Plaintiff alleges that Defendant has since resumed activities which breach the terms of the Agreement.

On July 5, 2016, Plaintiff filed its instant motion for a HIPAA qualified protective order. On July 11, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In this case, Plaintiff has subpoenaed certain entities and witnesses that are involved in the fields of pharmacy and medicine. Specifically, Plaintiff seeks to obtain, *inter alia*, (a) the past, present, or future physical or medical condition of certain individuals, (b) the provision of care to an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual. In support of its request, Plaintiff relies on 45 CFR 164.512(e)(1), which provides, in pertinent parts:

- (e) Standard: Disclosures for judicial and administrative proceedings.
- (1) Permitted Disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceedings:
 - (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
 - (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court of administrative tribunal, if:
 - (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
 - (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made

by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

- (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
 - (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 - (C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 - (1) No objections were filed; or
 - (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- (iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - (B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
- (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information

requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

- (A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
- (B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

While 45 CFR 164.512 provides authority for a qualified protective order in certain circumstances, the Court is convinced that Plaintiff has failed to establish that such circumstances exist in this case. Plaintiff has failed to identify the entities and/or individuals that it intends to subpoena and has not demonstrated that the information sought is relevant to the instant case. Moreover, the entities/individuals from whom the discovery is sought, nor the individuals whose confidential information is ultimately at issue, are parties to this matter. Accordingly, the individuals whose interests are potentially impacted by the requested order have no way of knowing their information is being sought. For these reasons, the Court is satisfied that Plaintiff's motion should be denied until such time that Plaintiff establishes the relevancy of the information sought and the inability to obtain the needed information without obtaining the confidential information.

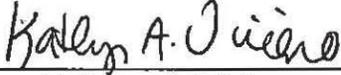
III. Conclusion

Based upon the reasons set forth above, Plaintiffs' motion for a qualified protective order is DENIED WITHOUT PREJUDICE. In compliance with MCR

2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

DATED: JUL 28 2016



Hon. Kathryn A. Viviano,
Circuit Court Judge