

JAN 17 2023

By ANGIE SPARKS, Clerk
BRITTNEY WILBURN

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

DANA ROLAN, on her own behalf
and on behalf of the class she represents,

Plaintiffs,

vs.

NEW WEST HEALTH SERVICES,
DARWIN SELECT INSURANCE
COMPANY and ALLIED WORLD
ASSURANCE COMPANY and DARWIN
NATIONAL ASSURANCE COMPANY,

Defendants.

Cause No. DDV 2010-91

Honorable Christopher D. Abbott

**HIPAA QUALIFIED
PROTECTIVE ORDER**

In 2012, this Court issued a qualified protective order to allow the plaintiffs to obtain information from defendant New West Health Services concerning the identities of class members and their eligibility for monetary recovery. DN 59. This Order shall supplement DN 59 and if in conflict with it shall supersede it. Since the entry of DN 59, the New West Health Services has ceased doing business and their records were transferred to PacificSource Health Plans as records custodian. The Class has been certified and Kroll Settlement Administration has been authorized to administer the Class. In order to allow disclosure of potentially HIPAA-protected information from PacificSource Health Plans, particularly, and all other persons, including health care providers, generally, this Court issues this HIPAA Qualified Protective Order in accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder, including specifically 45 C.F.R. §§ 164.512(e)(1)(ii)(B) and 164.512(e)(1)(v), to enable the production and limit the use or disclosure of Protected Health Information in this litigation.

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As used herein, the following terms shall have the following meanings:

1. "Litigation" means this action, Cause No. DDV 2010-91, any actions remanded therefrom, and any appeals thereof.
2. "Covered entity" shall have the same definition as set forth in 45 C.F.R. § 160.103.
3. "Protected Health Information" ("PHI") shall have the same definition as set forth in 45 C.F.R. § 160.103.

The Order is subject to the following qualifications:

- (1) Pursuant to §164.512 (e)(v)(A), the class counsel and its administrator are prohibited from using or disclosing the information for any purpose other than the litigation or proceeding for which such information is requested.
- (2) The parties and their attorneys shall be permitted to use PHI in any manner reasonably connected with the litigation, including, but not limited to, disclosure to the parties and their attorneys, insurers, claims managers, experts, and consultants, the Court, necessary court personnel, court reporters, copy services, trial consultants, jurors, any appellate court, and other persons and entities involved in the litigation process. Any experts retained by a party to this litigation to whom sharing, or disclosure of PHI is made must sign the Acknowledgment attached hereto as Exhibit A unless such permission for such disclosure has been granted by the Court. Counsel providing access to PHI shall retain copies of the executed Acknowledgment(s) and provide them to another party as requested.

- (3) Any person may waive their right to the protections of this Order to their own PHI if done so with a HIPAA-qualified written release to the party seeking to use such information.
- (4) Pursuant to §164.512 (e) (v) (B), the class counsel and administrator will cause the destruction of any protected health information (including all copies made) at the end of the litigation or proceeding.
- (7) The class counsel and administrator shall have the right to contact said potential class members for purposes related to this lawsuit subject to the protection provided by this Order.
- (8) Before discussing any details of their medical conditions, the putative class members shall be informed of their right of privacy in medical information.
- (9) Nothing in this Order shall serve to prohibit Allied or any party from access to or use of information relevant to the reasonableness of the settlement or the potential refund of unused interpled funds.
- (10) Should the parties believe that modification of this Order is appropriate, the Court shall be so notified.

DATED this 12th day of January, 2023.

CHRISTOPHER D ABBOTT

District Court Judge

c: Erik B. Thueson
Robert Lukes
Martha Sheehy
Randall Nelson
Gary Zadick
John Morrison/Scott Peterson

EXHIBIT A

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY

<p>DANA ROLAN, on her own behalf and on behalf of the class she represents,</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>NEW WEST HEALTH SERVICES, DARWIN SELECT INSURANCE COMPANY and ALLIED WORLD ASSURANCE COMPANY and DARWIN NATIONAL ASSURANCE COMPANY,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">Cause No. DDV 2010-91</p> <p style="text-align: center;">Honorable Christopher D. Abbott</p> <p style="text-align: center;">QUALIFIED HIPAA PROTECTIVE ORDER</p>
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**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
HIPAA QUALIFIED PROTECTIVE ORDER**

I, _____, hereby attest to my understanding that information or documents containing Protected Health Information ("PHI") are provided to me subject to the HIPAA Qualified Protective Order ("Order") dated January __, 2023, entered by the Court in the above-captioned litigation ("litigation"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Acknowledgment to the Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any PHI disclosed pursuant to the Order.

I further agree that I shall not disclose to others, except in accord with the Order, any PHI, in any form whatsoever, and that such PHI may be used only for the purposes authorized by the Order.

I further agree to return all copies of any documents or information containing PHI I have received to counsel who provided them to me upon completion of the purpose for

which they were provided and no later than the conclusion of this litigation. I further agree and attest to my understanding that my obligation to honor the confidentiality of such PHI will continue even after this litigation concludes. I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Montana First Judicial District, Lewis and Clark County, for the purposes of any proceedings relating to enforcement of the Order, even if such enforcement proceedings occur after termination of this action. I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Acknowledgment.

Date: _____

Printed Name: _____

Signature: _____