

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and
STATE OF WISCONSIN

Plaintiffs,

DR. TOBY TYLER WATSON,

Relator,

v.

JENNIFER KING VASSEL,

Defendant.

Case No. 11-CV-236-JPS

PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and 45 C.F.R. § 164.512(e)(1), promulgated under the Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-191, §264, 110 Stat. 1936 (HIPAA), the Court finds good cause for the issuance of a qualified protective order. Accordingly,

IT IS HEREBY ORDERED that:

1. The parties (and their attorneys) to the above-captioned matter are hereby authorized to receive, subpoena, and transmit “protected health information” pertaining to minor patients of defendant, Jennifer King Vassel (“King Vassel”), who submitted for Medicaid reimbursement prescriptions from King Vassel for uses that are not supported by the American Hospital Formulary Service Drug Information (AHFS); the United States Pharmacopeia–Drug Information or its successor publications (US Pharmacopeia); or the DRUGDEX Information System (DRUGDEX).

2. For the purposes of this order, subject to the restrictions contained in paragraph 1, above, protected health information shall have the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and 160.501. Protected health information includes, but is not limited to, health information, including demographic information, relating to either: (a) the past, present or future physical or mental condition of an individual; (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. However, any records produced should be redacted so as: (1) not to reflect any patient's Social Security number; and, (2) to reflect *only* the patient's first and last initials (i.e. the patient's full name should not appear anywhere in the records).

3. For purposes of this litigation, Watson seeks discovery only from King Vassel, and Wisconsin Medical Assistance Program, Wisconsin BadgerCare System, and Wisconsin Forward Health. As those entities are all "covered entities" (as defined by 45 C.F.R. § 160.13), the Court has power to authorize them to disclose protected health information for purposes of this litigation. Thus, the above-named entities are hereby authorized, subject to the restrictions set forth in paragraphs 1. and 2., above, to disclose to the attorneys in this matter protected health information pertaining to minor patients (under 18 years old at the time of the prescriptions) who received Medicaid benefits since March 3, 2005, including under the Wisconsin Medical Assistance Program, Wisconsin BadgerCare System, and/or Wisconsin Forward Health, and who received prescriptions from King Vassel for uses that are not supported by the AHFS, the US Pharmacopeia, or the DRUGDEX.

4. The parties and their attorneys shall be permitted to use or disclose the protected health information that they receive in this matter *only* for purposes of prosecuting or defending *this* action and any appeals of this case. To be clear, this means that the protected health information that the parties gather in this case *may be used only for this case and not any other*.

5. This includes, but is not necessarily limited to, disclosure to their attorneys, experts, consultants, court personnel, court reporters, copy services, trial consultants, and other entities or persons involved in the litigation. **Prior to disclosing the protected health information to entities or persons involved in this litigation, counsel shall inform each such entity or person that the protected health information may not be used or disclosed for any purpose other than this litigation.** Counsel shall take all other reasonable steps to ensure that entities or persons receiving the protected health information do not use or disclose such information for any purpose other than this litigation.

6. Within 45 days after the conclusion of the litigation including appeals, the parties, their attorneys, and any other person or entity in possession of protected health information received from counsel pursuant to paragraph 5 of this Order, shall return the protected health information to the covered entity or destroy any and all copies of protected health information.

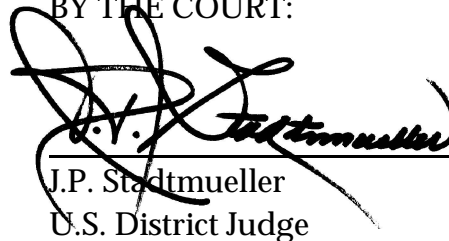
7. **This Order does not control or limit the use of protected health information that comes into the possession of the parties or their attorneys from a source other than a “covered entity,” as that term is defined in 45 C.F.R. § 160.103.**

8. Nothing in this Order authorizes the parties to obtain medical records or information through means other than formal discovery requests, subpoenas, depositions, pursuant to a patient authorization, or other lawful process.

9. This order does not authorize either party to seal court filings or court proceedings. The Court will make a good cause determination for filing under seal if and when the parties seek to file protected health information or other materials under seal.

Dated at Milwaukee, Wisconsin, this 2nd day of October, 2013.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge