

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Shannon Miller, Jen Banford,
and Annette Wiles,

Plaintiffs,

vs.

The Board of Regents of the
University of Minnesota,

Defendant.

Court File No. 15-cv-3740 (RHK/LIB)

PROTECTIVE ORDER

Upon consideration of the parties' Stipulation for Protective Order [Docket No. 21], as slightly modified by the Court pursuant to its inherent discretion to manage litigation pending before it pursuant to Fed. R. Civ. P. 26(c);

IT IS HEREBY ORDERED:

1. As used in the Protective Order, these terms have the following meanings:
 - (a) "Attorneys" means the parties' counsel of record;
 - (b) "Confidential" documents are documents designated pursuant to Paragraph 2;
 - (c) "Documents" are all materials within the scope of Fed. R. Civ. P. 34;
 - (d) "Outside Vendors" means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;
and
 - (e) "Written Assurance" means an executed document in the form attached as **Exhibit A**.

(f) “Producing Party” means the party producing documents in the course of discovery in this action.

(g) “Receiving Party” means the party receiving documents produced in the course of discovery in this action.

2. A party may designate a document “Confidential” to protect information within the scope of Fed. R. Civ. P. 26(c) and documents considered to be confidential, private, or nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01 *et seq.* (“MGDPA”), or the Federal Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”).

4. “Confidential” documents also include documents that contain confidential, private or not-public information, including, but not limited to:

- (a) health care records of any individual, including but not limited to medical, psychiatric, dental, chiropractic, and optometric records, and any and all data protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (b) counseling records of any individual, including but not limited to mental health counseling; and
- (c) other information required by law or agreement to be kept confidential.

Any dispute between the parties as to the designation of any specific material as “Confidential” shall be resolved pursuant to Paragraph 13.

5. All “Confidential” documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, use, transfer, disclose or communicate in any way the documents or their contents to any person other than those specified in Paragraph 6. Any other use is prohibited.

6. Access to any “Confidential” document shall be limited to:

- (a) the Court and its staff;
- (b) Counsel for the parties to the action and the legal assistants, clerical, and secretarial staff employed by such counsel, any expert witness staff retained by the parties, mediators and attendant staff, any independent medical examiner(s) and attendant staff, and outside vendors, including but not limited to messengers (in a sealed envelope, box or other package), copy, and other clerical services vendors;
- (c) persons shown on the face of the document to have authored or received it;
- (d) court reporters retained to transcribe testimony;
- (e) the parties;
- (f) witnesses whose testimony involves such documents and information;
- (g) outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its attorneys to provide assistance as mock jurors or focus group members or the like, or to furnish technical or expert services, and/or to give testimony in this action;

- (h) actual or potential experts, independent investigators, or consultants who have executed a Written Assurance in the form attached hereto as Exhibit A;
- (i) actual or potential witnesses who have executed a Written Assurance in the form attached hereto as Exhibit A; and
- (j) persons retained by the parties as a mediator or to play some other alternative dispute resolution role.

7. Third parties producing documents in the course of this action may also designate documents as “Confidential,” subject to the same protections and constraints as the parties to the action. A copy of the Protective Order shall be served along with any subpoena served in connection with this action. All documents produced by such third parties shall be treated as “Confidential” for a period of 21 days from the date of their production, and during that period any party may designate such documents as “Confidential” pursuant to the terms of the Protective Order.

8. Each person appropriately designated pursuant to Paragraph 6(h) to receive “Confidential” information shall execute a “Written Assurance” in the form attached as **Exhibit A**.

9. All depositions or portions of depositions taken in this action that contain confidential information may be designated “Confidential” and thereby obtain the protections accorded other “Confidential” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within 21 days of receipt of the transcript. Unless otherwise agreed, depositions shall be

treated as “Confidential” during the 21-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses “Confidential” information shall be taken only in the presence of persons who are qualified to have access to such information.

10. Any party who inadvertently fails to identify documents as “Confidential” shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-designated documents. Any party receiving such improperly-designated documents shall retrieve such documents from persons not entitled to receive those documents and, upon receipt of the substitute documents, shall return or destroy the improperly-designated documents.

11. If a party files documents with the Court containing information designated as protected pursuant to the terms of this Order, the filings must be in compliance with the Electronic Case Filing Procedures for the District of Minnesota. The parties are advised that designation by a party of a document as protected pursuant to the terms of this Order cannot be used as the sole basis for filing the document under seal in connection with either trial or a nondispositive, dispositive, or trial related motion. Only those documents and portions of a party’s submission, or any part thereof, which otherwise meets requirements for protection from public filing (including, but not limited to, a statute, rule or regulation prohibiting public disclosure, or protection under the attorney-client privilege or work product doctrine, or the standards for protection set forth in Fed. R. Civ. P. 26(c)), as first determined by the Court upon motion and a showing of good cause, shall be filed under seal. If a party intends to file with the Court a document

designated by another party as protected pursuant to the terms of this Order, then that filing party shall provide reasonable advance notice to the designating party of such intent so that the designating party may determine whether or not they should bring a motion before the Court which seeks to require the protected documents to be filed under seal. Any party which seeks to assert that a document should be filed with the Court under seal shall have the burden of demonstrating that the document should be filed under seal.

12. Prior to the trial of this matter, counsel for the parties shall seek to reach agreement on the handling of “Confidential” information and documents at trial.

13. Any party may request a change in the designation of any information designated “Confidential.” Any such document shall be treated as designated until the change is completed. If the requested change in designation is not agreed to within ten (10) days, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “Confidential” in the action may be affected. The party asserting that the material is “Confidential” shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c) or other federal, state or local laws.

14. Inadvertent production of any Discovery Material shall be without prejudice to any claim that such Discovery Material is privileged or protected from discovery as work product or by reason of any other applicable privilege, including without limitation the attorney-client privilege, and no party shall be held to have waived

any rights by such inadvertent production. If the claim of inadvertent production is made pursuant to this paragraph with respect to any Discovery Material then in the custody of another party, such other party shall promptly return to the claiming party or person that Discovery Material as to which the claim of inadvertent production has been made and all copies thereof, and the party returning such Discovery Material shall not use the information with respect to which a claim of inadvertent production has been made for any purpose, except by motion to the Court to compel production of the documents or information claimed to be privileged. The term “Discovery Material” as used herein shall include any document, deposition testimony, electronic data, interrogatory response, response to requests for admissions, response to requests for production or other information disclosed or produced by or on behalf of a party (or any of its attorneys or other agents), or by or on behalf of a non-party (or any of its attorneys or other agents) in this Action.

15. Within sixty (60) days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “Confidential,” and all copies of such documents, and shall destroy all extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the 60-day period. Attorneys for the parties shall be entitled to retain, however, a set of all documents produced in this matter by any party, filed with the Court, a set of all deposition transcripts, a set of all deposition exhibits, a set of all trial exhibits and all correspondence generated in connection with the action.

16. Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

17. No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

18. The obligations imposed by the Protective Order shall survive the termination of this action.

Dated: January 26, 2016

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

EXHIBIT A

WRITTEN ASSURANCE

_____ declares that:

I reside at _____
in the City of _____, County of _____, State of _____.

My telephone number is _____.

I am currently employed by _____, located at _____, and my current job title is _____.

I have read and I understand the terms of the Protective Order dated _____, 2016, filed in Case No. 15-cv-3740 (RHK/LIB), pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated “Confidential” obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my

possession designated “Confidential”, and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on _____
(Date)

(Signature)