

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DARCY CORBITT, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2:18-cv-91-MHT-GMB
	)	<b>UNOPPOSED</b>
HAL TAYLOR, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**UNOPPOSED MOTION FOR ENTRY OF QUALIFIED HIPAA PROTECTIVE ORDER**

Defendants Hal Taylor, Charles Ward, Deena Pregno, and Jeannie Eastman hereby file this motion pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for entry of a qualified HIPAA Protective Order, and in support state the following:

1. Defendants’ counsel have consulted with plaintiffs’ counsel, and plaintiffs’ counsel have stated they do not oppose this motion or the proposed protective order.
2. Plaintiffs filed this suit on February 6, 2018, asserting a constitutional challenge to the policy of the Alabama Law Enforcement Agency (“ALEA”) for changing the sex designation on an Alabama driver license. Plaintiffs are transgender individuals who challenge ALEA’s policy requiring proof of gender reassignment surgery before changing the sex designation on a driver license. *See* Doc. 38 ¶¶ 17, 61, 71-73, 75, 83, 85, 91, 93, 95-99 (Amended Complaint).
3. On May 18, 2018, the parties filed a Joint Motion for Entry of Stipulation and Order for the Production and Exchange of Confidential Information. Doc. 32. The parties’ proposed order defined “Confidential Information” to mean (1) social security or taxpayer identification numbers; (2) birth dates; (3) names of persons known to be minors; (4) financial account numbers; (5)

driver's license numbers; and (6) any document containing the anonymous plaintiff's name.<sup>1</sup> Doc. 32-1 at 2. The Magistrate Judge granted the parties' joint motion and entered the Protective Order limiting the disclosure of confidential information exchanged in the lawsuit as set out in the order. Doc. 33.

4. The Protective Order entered in this case does not specifically reference the exchange of information that might constitute protected health information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

5. While defendants have taken measures to limit the disclosure of Confidential Information during the course of discovery in this case pursuant to the Protective Order and assert that they are not a "covered entity" under HIPAA, they anticipate submitting redacted copies of documents relating to non-parties' requests to change the sex designation on their Alabama driver licenses as well as plaintiffs' discovery responses and deposition testimony. These documents contain references to non-parties and plaintiffs' medical conditions.<sup>2</sup>

6. Out of an abundance of caution, defendants request the entry of a qualified HIPAA protective order authorizing the disclosure of information that might constitute protected health information for the purpose of litigating the claims and defenses in this lawsuit. *See* 45 C.F.R. 164.512(e)(1)(i); *Id.* 164.512(e)(1)(v).

7. Defendants have included a proposed HIPAA protective order with the filing of this motion.

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<sup>1</sup> This lawsuit originally commenced with a John Doe plaintiff who was allowed to proceed anonymously by court order. Docs. 2, 10. Plaintiffs later filed an amended complaint to substitute the John Doe plaintiff for a Jane Doe plaintiff. Docs. 34, 36.

<sup>2</sup> The parties anticipate taking the additional measure of filing a joint motion for leave to file the non-parties' license change requests under seal so as to avoid any potential disclosure of a non-party's identity from the redacted documents.

Respectfully submitted,

Steve Marshall,  
*Attorney General*

s/ Brad A. Chynoweth  
Brad A. Chynoweth (ASB-0030-S63K)  
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***Counsel for Defendants Hal Taylor, Charles  
Ward, Deena Pregno, and Jeannie Eastman***

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s Brad A. Chynoweth  
Counsel for Defendants

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**PROPOSED QUALIFIED HIPAA PROTECTIVE ORDER**

During the course of discovery, the defendants produced documents relating to non-parties' requests to change the sex designation on their Alabama driver licenses and received plaintiffs' discovery responses and deposition testimony. These documents contain references to non-parties and plaintiffs' medical conditions.<sup>1</sup> Defendants now anticipate submitting redacted copies of these documents. Defendants have requested the entry of a qualified HIPAA protective order authorizing the disclosure of information that might constitute protected health information for the purpose of litigating the claims and defenses in this lawsuit. *See* 45 C.F.R. 164.512(e)(1)(i); *Id.* 164.512(e)(1)(v). Plaintiffs do not oppose this limited order.

This order authorizes Defendants to submit the redacted information to the Court under seal. This order is intended to authorize such disclosures under the privacy regulations issued pursuant to HIPAA. 45 C.F.R. § 164.512(e)(1)(i). The parties are **EXPRESSLY PROHIBITED** from using or disclosing the protected health information submitted pursuant to this order for any purpose other than this action. Further, the parties are **ORDERED** to destroy the protected health

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<sup>1</sup> The parties anticipate taking the additional measure of filing a joint motion for leave to file the non-parties' license change requests under seal so as to avoid any potential disclosure of a non-party's identity from the redacted documents.

information (including all copies made), immediately upon conclusion of this action. *See* 45 C.F.R. §§ 163.502(b); 164.512(e)(1)(v).

**DONE** and **ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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UNITED STATES MAGISTRATE JUDGE