

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DONNA L. DONMOYER, as	:	No. 98-01189
Administrator of the Estate	:	
of WILLIAM H. DONMOYER, JR.,	:	
and as Parent and Natural	:	
Guardian to JOY LEEANN	:	
DONMOYER; and WILLIAM H.	:	
DONMOYER, III,	:	
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW
MATTHEW C. INDECK, M.D.; TODD	:	
PETTY, M.D.; BRENDA	:	
MARTINDALE, R.N.; THERESA	:	
RAUP, R.N.; MICHELLE	:	
CHAMBERLIN; LAREE HUMMEL,	:	
R.N.; GEISINGER CLINC; PENN	:	
STATE GEISINGER CLINIC,	:	Motion to Compel Responses to
Successor in Interest to	:	Plaintiffs' Second Request for
GEISINGER CLINIC; GEISINGER	:	Production of Documents
MEDICAL CENTER,	:	
Defendants	:	

**OPINION AND ORDER**

The issues presented in this matter concerns a request by the defendants for the Court to grant a Protective Order pursuant to Pa.R.Civ. 4012(9), which order would allow the defendants to produce documents in response to the plaintiffs' Request for Production of Documents paragraphs 14(a)(b), 17, 20(a)(b), 29(a)(b), with restrictions on the plaintiffs' ability to disseminate the produced documents to any third party beyond this litigation.<sup>1</sup>

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<sup>1</sup>Pursuant to correspondence of counsel, it is the Court's understanding that the only documents subject to controversy are the number listed in paragraph one. All other issues have been resolved.

Pa. Rule of Civil Procedure 4012 entitled "Protective Orders" allows the Court to enter an order for good cause shown to protect a party from unreasonable annoyance, embarrassment, oppression, burden or expense. Specifically subsection (9) of Rule 4012 allows the Court for good cause shown to enter protective order: "that a trade secret or other confidential research, development or commercial information shall not be disclosed or be disclosed only in a designated way." The defendants contend the information and documents requested in questions 14(a)(b), 17, 20 (a)(b) and 29(a)(b), are documents that contain trade secrets of the Geisinger defendants or are documents with confidential research, developments or commercial information, which could potentially harm Geisinger if released to the public stream of third parties and potentially competitors of Geisinger. Geisinger readily agrees that the documents in question hold potential relevance to this litigation, and they have no objection, providing the documents to the plaintiff pursuant to their (Geisinger) discovery obligation in this case. However, Geisinger contends that the Court should enter a protective order, pursuant to Rule 4012(9), which would order the plaintiffs not to release the documents to any third parties beyond this litigation.

The plaintiffs are candid in their response to the defendants that they feel there are important public policy reasons for them to oppose a protective order because plaintiffs' counsel desires to disseminate the discovery information to other plaintiffs' counsel for other current or future litigation against Geisinger and other health care providers. The plaintiffs, in their letter to the Court of October 9, 2001, at p. 5 state: Public policy favors disclosure without restrictions or limitation such as the confidentially order

sought by Hospital Defendants.” The plaintiffs cite to case law which notes the importance of sharing of information among current and potential litigants being furthered by open proceedings. They also argue that circumstances weigh against confidentiality when the information sought is important to public health and safety and when sharing of information with others would promote fairness and efficiency. See Glenmeade Trust Company v. Thompson, 56 F.2d 476, 485 (CA 3 Pa. 1995); Pansy v. Bone of Strovsbuny, 23 F.3d 772, 786 (CA 3 Pa 1994); Garcia v. Peoples, 734, SW.2d 343 (Tex. 1987).

In light of the serious disagreement between the parties, the Court has performed an in-camera review of the concerned documents which would be provided by the defendants in answering the Request for Production 14(a)(b), 17, 20(a)(b) and 29(a)(b). The Court notes there is some history of this Court entering protection orders in other medical malpractice cases as is pointed out by the defendants in their brief. See Iscrllagen v. Geisinger Medical Center, No. 95-01678, Order of September 7, 1997 (J. Brown) and Bingaman v. Geisinger Medical Center et.al, No. 97-01563, Order of June 15, 1999 (J. Kieser). Frankly, the Court entered upon the in-camera review with some reluctance because the dispute between the parties here does not involve this current litigation since the defendant have no objection to providing the discovery involved to the plaintiffs for use in this litigation. Therefore, although this dispute exceeds the relevant issues in this case to some extent, the Court acknowledges that some important policy issues are implicated in the question of whether a non dissemination protective order should be entered by the Court. Thus, the Court has carefully reviewed the documents submitted by Geisinger for which Geisinger seeks a protective order.

In reviewing the documents, the Court notes that it has no special sophistication or talent in discerning the intricacies of the documents in the Geisinger Medical systems. Therefore, the Court has tried to review the documents and balance the competency principles in a commonsense matter. See Zeuth Radio Corp. v. Matsushita Electric Indust. Co. Ltd., 529 F.Supp. 866, 891, (ED. Pa. 1981) ( indicating hard and fast rules in this area are inappropriate and the Court’s common sense is a helpful guide).

The Court’s review of the records reveals the following. Documents submitted in-camera in response to paragraphs 29(a) and (b) concern patient /family education. Document 29(a) is a short discussion about the importance of patient education. The document is part of the hospital “Patient Care Manual.” Document 29(b) is a patient education sheet concerning “Deep Vein Thrombosis.” It discusses what a patient what a patient should do at home in continuing treatment for this problem. It is clear the form is meant to be provided to patients and their families and therefore, meant to be disseminated to the public. The documents obviously are not made secrets, nor do they reveal a complicated research effort on behalf of Geisinger. The Court sees no way that such documents, if made available to Geisinger competitors, would unfairly disadvantage Geisinger. The Court cannot believe that other hospitals would not possess similar knowledge and provide similar written instructions to patients. The Court sees no reason to require confidentiality of these documents. Therefore, the Court will deny Geisinger’s request for protective order regarding these documents.

The remainder of the disputed documents present more difficult question. Document 14(a) is called “A Guideline for Prophylaxis of Deep Vein Thrombosis August

1998.” The document contains a detailed, well-researched discussion of “Pathophysiology of Deep Vein Thrombosis.” The document has detailed attachment including a full page of definitions, two pages of references used by the writers of the document, a one-page DVT (Deep Vein Thrombosis) Risk Factor assessment calculations and a one-page chart of DVT risks. It is obvious to the Court that substantial research and effort was made by Geisinger in addressing the subject matter of the involve topics. While the Court does not believe the document would necessarily be a trade secret, it is certainly “confidential research” as envisioned by Rule 4012(9). While it is difficult for the Court to say that dissemination of the document would harm Geisinger’s position with potential competitors, it would provide third parties with the benefit of the fruits of Geisinger’s extensive research on this topic. It is understandable to the Court why Geisinger would seek to maintain the benefit of its labors in this regard. In an affidavit submitted by Geisinger it is noted that Geisinger has “practitioner workgroups” which review medical literature involving patient medical care and current health care industry practices. It is obvious this document would be the fruit of such an effort. While the Rizzo affidavit does not really address how Geisinger could be harmed competitively, it does appear to the Court that any competitor would be advantaged by gaining the fruits of Geisinger’s extensive research and work product. The Court also sees little benefit to the plaintiffs’ counsel and future the plaintiffs and the plaintiffs’ counsel for dissemination of this information. The document is simply the fruits of Geisinger’s research on this topic. Thus, the Court feels the balance here swings toward providing protection to Geisinger’s work product and it feels there is good cause to grant Geisinger’s request for a Protective Order.

The court finds document produced in response to Request for Production number 14(b) to be very similar to documents 14(a). Document 14(b) is an extensively researched 6-page document discussing Heparin which is a drug used in treatment of thromboembolic disorders. The document contains Dosage Adjustment Charts and extensive listing of dosage forms. The document is complicated and appears to be a significant work product of Geisinger. For the reasons stated in our discussion of document 14(a), the Court finds Geisinger is entitled to the benefit of a protective order for document 14(b).

The most difficult issue concerns documents 14(c), 17, 20(a) and 20(b). All these documents appear to come from a Geisinger "Nursing Clinical Practice Manual." Document 14(c) addresses "Anticoagulant Therapy." Document 17's subject is "Deep Vein Thrombosis (DVT) - Practice Guidelines." Document 20(a) is the same document found in document 17. Document 20(b)'s subject is "Pulmonary Embolism." All the documents appear in a Geisinger policy manual entitled "Nursing Clinical Practice Manual." The documents appear to give practice instructions to Geisinger nurses concerning patient care for the individual topics covered by the document. Documents 17, 20(a) and 20(b) all have the same format of disclosure in bold type, "Suggest Nursing Diagnosis", "System Outcome", and "Interventions." Document 14(c) has a different format as it is under a policy section in the manual entitled "Health Teaching Standard."<sup>2</sup> In extensive detail under a heading "Learner Outcomes," the document appears to give

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<sup>2</sup>The other documents, 17, 20(a) and 20(b) fall under a section in the manual entitled "Standard of Care."

Geisinger nurses instruction and education on their responsibilities with patients undergoing anticoagulant therapy.

While the Court does not necessarily see these documents as trade secrets, they are the result of confidential research by Geisinger and the documents lay out the protocol which Geisinger wants their nurses to follow in these complicated areas. The Court also understands that these documents are developed to meet regulatory, statutory and health care industry requirements with which Geisinger must comply. The affidavit of Nancy Rizzo does not state how providing these documents to competitors would harm Geisinger's competition position. However, it does appear to the Court that there could be competitive disadvantage to Geisinger if this information was disseminated to other hospitals or health care professionals.

The Court also feels there is some value in allowing the plaintiffs' counsel to share the documents with other attorneys litigating issues concerning health care problems. Thus, the Court feels it appropriate in regard to documents 14(c), 17 and 20(a)(b) to provide a limited protective order that would allow the plaintiffs' counsel to maintain copies of the involved documents in their file and also, provide copies of the documents to other counsel involved in health care litigation against Geisinger. Plaintiffs' counsel will not be permitted to provide the documents to any other third party and expressly, may not provide copies of the documents to any potential competitor of Geisinger. The court will also require the plaintiffs' counsel to have any attorney they provide copies of these documents to sign an agreement that they will not disseminate the documents to any other third parties, except for expert witnesses they have retained in their

litigation. The agreement should also state that any violation of the document disclosure agreement would subject the violator to jurisdiction of the Lycoming County Court for violation of the attached order. The Court believes that a limited Protective Order as discussed in this opinion would provide a reasonable balance of the circumstances involved in light of the competing concerns raised in this matter.

Accordingly, the Court will enter the following:

### **ORDER**

AND NOW, this 20<sup>th</sup> day of November 2001, the Court GRANTS the request of Defendants Geisinger Clinic and Geisinger Medical Center for a protective order for the documents they will provide to plaintiffs in answering paragraphs 12(a) and 14(b) of plaintiffs' second request for production of documents.

In regard to the documents submitted by the defendants in answering requests 14(a) and (b), the plaintiffs and their attorneys shall not disseminate these documents to any third parties and the documents shall be returned to the defendants once this litigation is completed. This provision would not limit plaintiffs' counsel from allowing their staff and expert witnesses to view the documents. Plaintiffs' counsel shall make sure that any person to whom the documents are disseminated or revealed are made aware of these restrictions. At the conclusion of this litigation, plaintiffs' counsel shall be responsible for returning the documents and any photocopies of the documents to defense counsel not later than sixty (60) days after the completion of litigation.



In regard to paragraphs 14 (c), 17, 20 (a) and (b), the Court GRANTS a limited protective order as follows. Plaintiffs, their counsel, staff and expert witnesses may only reveal these documents to other counsel involved in health care litigation against Geisinger Medical Center or Geisinger Clinic.<sup>3</sup> Plaintiffs' counsel shall require any attorney with whom such documents are released to sign an agreement that they will not release the documents or a copy of the documents to any other party, except for their staff and expert witnesses. The written agreement signed by the receiving attorney shall also state that any violation of the agreement will subject the violator to the jurisdiction of the Lycoming County Court for contempt of this Order. Plaintiffs' counsel will be permitted to retain a copy of involved documents in their file after completion of this litigation subject to the terms of this Order.

The plaintiffs may not disseminate documents 14 (c), 17, 20 (a) and (b) to any other third party beyond attorneys as discussed in the previous paragraph.

The Court DENIES the request for a protective order with respect to requests 29 (a) and (b).

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<sup>3</sup>The Court is expressly limiting the dissemination of these documents to attorneys involved in litigation against Geisinger Clinic and Geisinger Medical Center because, if it does not, the documents could inadvertently end up in the hands of potential Geisinger competitors who may be involved in litigation with the attorneys receiving such documents.

The defendants shall provide all documents to plaintiffs' counsel within twenty (20) days of receipt of this Order.

By The Court,

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Kenneth D. Brown, J.