

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

versus

TERRY S. SHILLING, GEORGE G.
CROMER, WARNER L. THOMAS, IV,
WILLIAM A. OLIVER, CHARLES D.
CALVI, PATRICK C. POWERS, CGI
TECHNOLOGIES AND SOLUTIONS,
INC., GROUP RESOURCES
INCORPORATED, BEAM PARTNERS,
LLC, MILLIMAN, INC., BUCK
CONSULTANTS, LLC. AND
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA

SUIT NO.: 651,069 SECTION: 22

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PROTECTIVE ORDER

Before the Court is Plaintiff's Unopposed Motion to Enter Consent Protective Order.

Having considered the motion, the Court concludes that it should be, and is hereby, **GRANTED**.

Accordingly, it is **ORDERED** that:

1. "Confidential PHI Information" means: (a) Protected Health Information ("PHI"), which has the meaning set forth at 45 C.F.R. §160.103, the privacy of which is protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), applicable CMS regulations and the Health Information Technology for Economic and Clinical Health (HITECH) Act (all collectively "HIPAA"), and refers to PHI disclosed to a Party or other Qualified Persons in the course of and for purposes of litigation of the above-captioned matter; the party who produces any PHI is obligated to designate PHI by marking the same as "Confidential PHI" or with comparable language sufficient to notify the recipient that such documents may be PHI.

2. "Confidential Information" means information, other than Confidential PHI Information, that has been designated as Confidential in accordance with Section 4 of this Order.
3. "Qualified Person" means:
- a. counsel of record for Plaintiff and Defendants in this action captioned *James J. Donelon v. Terry S. Shilling, et al.*, Suit No. 651,069 ("This Action"), and lawyers retained and/or employed by the Parties in This Action as well as members, partners and employees of their firms ("Counsel");
 - b. testifying independent experts and independent expert consultants retained by a Party or by Counsel, and such members, employees, partners, or agents of such expert's firm required to undertake the retention, but solely for the purposes of assisting in the prosecution or defense of This Action (collectively "Independent Experts"), and only after the Independent Experts have read this Order and signed the Consent to Protective Order in the form of Exhibit "A" to this Order ("Consent");
 - c. Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana, solely in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., and the named Defendants in This Action, as well as their current officers, directors, and employees who are assisting with the prosecution or defense of This Action; however with regard to the Plaintiff, this shall include only those persons that are employed by the court appointed receiver (the "Parties", or "Party" when referred to individually);
 - d. witnesses, including deponents, to whom disclosure of Confidential or Confidential PHI Information is necessary for them to assist with the prosecution or defense of This Action, but, with respect to Confidential PHI Information, only after each has read this Order and signed the Consent, which the Party noticing the deposition or calling the witness will serve promptly upon all Parties. With respect to non-PHI Confidential Information, the witness shall be informed of the requirements of this Order but not be required to sign the Consent;
 - e. court reporters for depositions, after they have signed the Consent, which the Party noticing the deposition will keep;
 - f. Persons or entities that provide litigation support services (e.g., outside photocopying, data processing, graphic production services, translation, storage or retrieval services, e-discovery vendors, or jury research consultants) and their

employees and subcontractors, retained to assist in This Action, but only after such person or entity signs the Consent;

g. Any Party's insurers or such insurers' representatives but only after such person or entity signs the Consent; or

h. any person designated as a Qualified Person for specified Confidential or Confidential PHI Information in a written permission given by the Party who has produced the specified Confidential or Confidential PHI Information, after that person has signed the Consent and after the Discovering Party has served the Consent and the permission upon all Parties.

4. Prior to producing documents, electronically stored information or tangible things for inspection or prior to mailing or delivering copies of documents, electronically stored information or tangible things by a producing Party (including third parties) ("Producing Party") to a discovering Party ("Discovering Party"), the Producing Party may stamp any page (or analogous portion) of any document, including electronically stored information or any tangible thing, with the following legend, or a substantially similar legend:

"CONFIDENTIAL"

which will be referred to as a "Confidential Legend." Documents may be designated Confidential only when the information is proprietary, a trade secret, or other confidential research, development, technical, financial, or commercial information, or any sensitive, personal information. In lieu of marking the original of a document, the Producing Party may stamp the copies of the original that are produced or delivered. Discovering Parties will have reasonable access to a Producing Party's original documents. The designated pages will be stamped, to the extent reasonably possible, without defacing, obscuring, or overlapping any writing on the document. If any writing is defaced, obscured, or overlapped, then, upon request from counsel for a

Discovering Party, counsel for a Producing Party will promptly deliver to counsel for the Discovering Party a copy of the original document that is not defaced, obscured, or overlapped.

5. Any Party, including third parties, may designate information in deposition testimony, deposition exhibits, or documents (including electronically stored information and tangible things) produced in connection with a deposition as Confidential or Confidential PHI by indicating on the record during the deposition the testimony, exhibit, or document that the Party designates as Confidential or Confidential PHI or by stamping deposition exhibits or documents as set forth in Section 4. Any Party, including third parties, may also designate information in deposition testimony, deposition exhibits, or documents produced in connection with a deposition as Confidential or Confidential PHI by notifying counsel for the Parties to This Action, in writing within 30 days after receipt of the transcript or other record of the deposition, of the pages and lines of the transcript, the pages of the exhibits, and the pages of the documents (by document control number) that are designated as containing Confidential or Confidential PHI Information. Each Qualified Person who has received a record of the deposition, or a copy of the exhibit or document, will stamp the appropriate Confidential or Confidential PHI Legend on the cover of each transcript or other record of the deposition and on each page in each exhibit and document that has been designated Confidential or Confidential PHI Information. All deposition testimony and records of deposition testimony, in whatever form recorded, all deposition exhibits, and all documents produced in connection with depositions shall be treated as Confidential or Confidential PHI Information until this 30-day period has

passed. Deponents will not copy any portion of a deposition record or deposition exhibit containing Confidential or Confidential PHI Information.

6. Any disclosure of information that has not been designated as Confidential (or Confidential PHI) at the time of the production or disclosure will not be a waiver of confidentiality, in whole or in part, either as to the specific information disclosed, as to any information relating to the information disclosed (whether on the same or related subject matter), or as to any other information. A Producing Party may designate as Confidential or Confidential PHI, after its production or disclosure, any information that has been produced or disclosed without designation, by written notice to all Parties in accordance with the designation procedure in Sections 1 and 4 of this Order. Any disclosure by a Discovering Party made prior to such later designation shall not be deemed a violation of this Order. All Parties receiving such later notice will promptly stamp all designated pages with the appropriate Confidential Legend and will treat the designated information as Confidential Information immediately upon receipt of the written notice. Any Party to This Action by written notice to all Parties in accordance with the designation procedure in Sections 1 and 4 of this Order may designate as Confidential, after its production or disclosure, any information that has been produced or disclosed by another Party or non-party without designation.

7. Clawback Provision:

Due to the large volume of electronic and hard copy data in the possession, custody, or control of the Parties and the concerns regarding attorney-client privilege and work product protection, this Section is included to expedite and facilitate the production of

electronic and hard copy data, information and documents, and to protect against inadvertent disclosure of attorney-client privileged communications or work product materials. The disclosure or production of any information or document that is subject to an objection on the basis of attorney-client privilege or work-product protection or any other applicable privilege or ground for withholding production, shall be deemed to be inadvertent and will not constitute or be deemed to waive a party's claim to its privileged or protected nature or estop that party or the privilege holder from designating the information or document as attorney-client privileged or subject to the work product doctrine or otherwise protected from disclosure at a later date. Disclosure of the information or document by the Discovering Party prior to such later designation shall not be deemed a violation of the provisions of this Order. Any party receiving any such information or document shall return it and all copies thereof to the Producing Party (or certify in writing to the Producing Party that all copies have been destroyed), within 5 business days of request from the Producing Party, unless the recipient has a good faith and reasoned position that the information or document is not subject to the claimed privileged. In such case, the Discovering Party shall promptly notify the Producing Party of its position with respect to the particular document, and raise the issue with the Court within five business days, failing which the Discovering Party shall return it and all copies thereof to the Producing Party (or certify in writing to the Producing Party that all copies have been destroyed). Until the Court has ruled on the privilege issue, the Discovering Party shall hold the document in strict confidence and shall not seek to use it in depositions, as evidence, or in any other manner. If the Court upholds the privilege or other protection, the Discovering Party shall return the

document and all copies thereof to the Producing Party (or certify to the Producing Party in writing that all copies have been destroyed) within five business days of the Court's decision. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Producing Party that such materials have been produced.

8. Confidential and Confidential PHI Information will be used solely for the prosecution and defense of the claims in This Action, and shall not be used in any other proceeding, or for any business, regulatory, commercial, competitive, personal, or other purpose whatsoever. Confidential and Confidential PHI Information will not be disclosed or otherwise made available, orally or in writing, to anyone other than the following persons or in the following instances: (a) to Qualified Persons, in accordance with this Order; (b) to the Court, including court staff; (c) when the Producing Party consents in writing to a disclosure; or (d) when the Court, after notice to all Parties and a hearing, orders or permits disclosure.
9. If a party to another action or proceeding serves a discovery request for any Confidential or Confidential PHI Information, or if another court or administrative agency, and/or investigative agency, issues a subpoena for, or orders the production of, or makes a formal request for production of any Confidential or Confidential PHI Information, that a Discovering Party has obtained in This Action, then the Discovering Party will (a) promptly notify the Producing Party or the other person who produced the information and/or designated the document as Confidential of the discovery request, subpoena, or order within 48 hours of receipt of the request, subpoena, or order,

and, in any event, before it produces any documents; (b) describe the information sought and provide the Producing Party with a copy of the discovery request, subpoena, formal request, or order; (c) request an extension, if necessary, to enable the Producing Party or other person to object to the disclosure or production; and (d) cooperate fully with the Producing Party or other person to protect any Confidential or Confidential PHI Information from disclosure and to maintain its confidentiality. Thereafter, if the Producing Party makes a timely motion or application for relief from the subpoena or request in the appropriate forum, the person or Party subject to the subpoena or request shall withhold response until 5 days before the due date (including any extensions) to allow time for the Producing Party to seek relief from the subpoena.

10. The restrictions in this Order on the use and disclosure of Confidential or Confidential PHI Information will not apply when a Discovering Party can demonstrate to this Court that:

- a. at the time of production or disclosure to the Discovering Party intending to use or disclose the Confidential or Confidential PHI Information, the Confidential or Confidential PHI Information was already lawfully possessed by the Discovering Party without an obligation to maintain the confidentiality of the information or readily available to the public. Information that is produced to a government agency shall not be treated as "readily available to the public" unless and until it is freely and legally available through public sources, without the need for any specific process, demand or request; or
- b. subsequent to the production or disclosure to the Discovering Party intending to use or disclose the Confidential or Confidential PHI Information, the Confidential or Confidential PHI Information became readily available to the public through no fault of the Discovering Party intending to use the information (including its officers, employees, agents, attorneys or representatives) or other violation of law or duty, or was disclosed to the Discovering Party intending to use the information by a person who was in lawful possession of the information and who did not have an obligation to maintain the confidentiality of the information.

11. A Party will not be obliged to challenge any designation of Confidential or Confidential PHI Information, even if it disagrees with the designation. If any Party disputes at any time any designation of Confidential or Confidential PHI Information or designation of any Qualified Person, then the Parties involved shall first make a good faith effort to resolve the dispute without the intervention of the Court. If the dispute cannot be resolved, then the Party challenging the designation may seek relief from the Court by motion, after reasonable notice to the Party asserting a claim of confidentiality and after a hearing. If challenged in Court, the Producing Party shall bear the burden of proof regarding the necessity of any Confidential designation.
12. Unless the Court, after notice and a hearing, orders otherwise for good cause, only the persons allowed access to Confidential and/or Confidential PHI Information in accordance with this Order shall be permitted to make summaries, compilations, notes, or any other derivative use of Confidential or Confidential PHI Information ("Derivative Work Product"). Derivative Work Product shall have the same classification and be stamped with the same Confidential Legend that is stamped on the source Confidential or Confidential PHI Information.
13. When necessary, a Party may include Confidential or Confidential PHI Information in a Filing by using a motion to seal, and this Order will constitute an order permitting the filing of Confidential or Confidential PHI Information under seal. Any document filed in this manner, and all service copies, must bear a cover sheet, permanently affixed to the document, with the caption of this action, the title or a description of the document to which the Confidential or Confidential PHI Information relates, and a statement substantially in the following form:

CONFIDENTIAL: ACCESS RESTRICTED BY COURT ORDER

This document contains Confidential or Confidential PHI Information protected by a court order of confidentiality. The document may not be viewed, displayed, revealed, or disclosed to anyone other than counsel of record and court personnel, except by court order. Any document bearing a cover sheet indicating that it contains Confidential or Confidential PHI Information will not become a part of the public record of this action, except upon further order of this court, after notice to all Parties and a hearing.

14. Unless otherwise ordered by the court, all pretrial hearings and other proceedings during which Confidential or Confidential PHI Information may be disclosed will be conducted with no one but Qualified Persons present, or will be subject to such other order of this court as may be necessary to preserve the confidentiality of Confidential or Confidential PHI Information. The use of Confidential and/or Confidential PHI Information at trial will not be governed by this Order, but will be governed by an Order or Orders later to be entered in this action. This Order will not limit any Party's right to use Confidential or Confidential PHI Information in any pretrial hearing or proceeding or at trial subject to the protections of this Order or any later Order.
15. This Order is entered without prejudice to the right of any Producing Party to object to the production or disclosure of documents, tangible things, or electronically stored information, seek additional protective orders further restricting the use of information produced during discovery, or to object to any discovery, on any proper ground as provided by applicable law. By agreeing to this Order, the Parties are not waiving any objections to disclosure and/or production of any Confidential PHI Information. Also,

nothing in this Order shall be deemed a waiver of any Party's rights to object to the admission in evidence, in any pretrial hearing or proceeding or at trial of This Action, of any Confidential or Confidential PHI Information.

16. Within 30 days after the entry of a final judgment in This Action from which no appeal has been taken or can be taken or the entry of an order dismissing This Action and disposing of all claims of all Parties, all Discovering Parties and Qualified Persons must return all documents and all reproductions of documents containing Confidential or Confidential PHI Information, in their possession, custody, or control to the Counsel of record for the Discovering Party, for safekeeping until promptly destroyed by the Discovering Party's Counsel, or, in lieu thereof, the Qualified Persons shall certify in writing to the Discovering Party's Counsel that it has been destroyed. Counsel shall be entitled to retain pleadings and the exhibits thereto, affidavits, motions, briefs, or other papers filed with the Court, so long as they are clearly marked to reflect that they contain information subject to this Order.

17. Any Qualified Person receiving Confidential or Confidential PHI Information will be responsible for taking all reasonable and necessary steps to preserve the confidentiality of the Confidential or Confidential PHI Information in their possession. Qualified Persons will only request, use or disclose such PHI as is reasonably necessary to accomplish the purpose of the request, use or disclosure. Further, any Qualified Person receiving Confidential PHI Information must: a) protect access to Confidential PHI Information and access codes; b) use commercially reasonable and appropriate efforts to maintain the privacy and security of Confidential PHI Information and prevent unauthorized use or disclosure of the information; and c) implement administrative,

physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Confidential PHI Information in accordance with HIPAA.

18. Any Party providing Confidential or Confidential PHI Information to a Qualified Person must ensure that the Qualified Person has signed and furnished to the Party any required Consent. The Parties, Counsel, persons or entities that provide litigation support services and Independent Experts shall take reasonable steps to ensure that any of their respective employees, directors, officers, agents, partners, subcontractors and members who are permitted access to Confidential PHI Information or other Confidential Information as set forth above in Sections 2(a), (b) (c), and (f) above, are aware of this Order and abide by its terms.

19. Nothing in this Order shall prevent or prohibit a Party from seeking such additional or further protection as it deems necessary to protect Confidential PHI Information subject to discovery in this action. Further, Plaintiff and other Producing Party retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Confidential PHI Information by a Discovering Party or other Qualified Person, any of its agents, attorneys, or Subcontractors, or any third party who has received Confidential PHI Information.

20. Counsel will notify all Parties and the Court of any violation of this order of which Counsel becomes aware.

21. Violations of this Order may be punishable by sanctions, or such other punishment as is determined by the Court, including the sanctions permitted upon a finding of

contempt of court and the sanctions available under HIPAA for improper use or disclosure of Confidential PHI Information.

22. All Qualified Persons shall report to counsel for the Plaintiff and any other Producing Party within five (5) business days of their Discovery of any Breach of Unsecured Confidential PHI Information (as defined by 45 C.F.R. §164.402), any Security Incident (as defined by 45 C.F.R. §164.304), or any other unauthorized use or disclosure of Confidential PHI Information, and maintain and/or establish procedures for mitigating any harmful effect that is created by any improper use or disclosure of Confidential PHI Information in violation of this Order. In the event of a Breach of unsecured Confidential PHI Information by any Qualified Person, the Qualified Person shall take all steps required by HIPAA for such Breach.
23. The Parties acknowledge that unsuccessful Security Incidents are commonplace and, as such, the Parties acknowledge and agree that Section 22 above constitutes notice by a Qualified Person to the Plaintiff and other Producing Party of the ongoing existence and occurrence of such incidents for which no additional notice shall be required. Unsuccessful Security Incidents include, without limitation, pings and other broadcast attacks on the Qualified Person's firewall, port and other reconnaissance scans, and unsuccessful log-on attempts, as long as the foregoing do not result in unauthorized access, use or disclosure of Confidential PHI Information.
24. The Parties may, by stipulation, provide for exceptions to this Order, and any Party may seek an order of this Court modifying this Order. This Order will survive a final judgment in This Action and continue in force until modified or dissolved by an order

of this Court. The Court shall retain jurisdiction after the final disposition of This
Action for purposes of any application to modify or enforce the provisions of this Order.

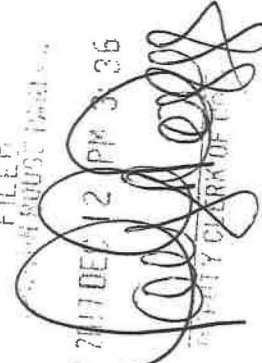
SO ORDERED this 13 day of Dec, 2017, at Baton Rouge, Louisiana.


HON. JUDGE TIMOTHY KELLEY, 19th JDC

I HEREBY CERTIFY THAT ON THIS DAY A COPY OF
THE WRITTEN REASONS FOR JUDGMENT /
JUDGMENT / ORDER / WAS MAILED BY ME, WITH
SUFFICIENT POSTAGE AFFIXED TO: *Robert Burke, Jr.*
Matthew Farley, Harry Rosenberg, James Brown
DONE AND SIGNED ON 12-15-17


DEPUTY CLERK OF COURT

John Hite III, Henry Ellerbe, Jr., V. Thomas Chalk Jr.,
Robert David Jr., W. Brett Mason, Robert Barton
J. E. Cullens, Jr., Frederic Le Clerq,
Thomas McEwen, Richard Bardenier,
Grant Guillot, Michael Belascio, Ryan French
Jason Maroney, Mirais Holden,
Alex Breckinridge V,

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DEPUTY CLERK OF COURT

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| JAMES J. DONELON, COMMISSIONER | : | SUIT NO.: 651,069 SECTION: 22 |
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| AND SURETY COMPANY OF | : | |
| AMERICA | : | STATE OF LOUISIANA |

EXHIBIT "A"
CONSENT TO PROTECTIVE ORDER

I, _____, hereby acknowledge that I have received a copy of the Protective Order in *James J. Donelon v. Terry S. Shilling, et al.*, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, Suit No. 651,069. Having read and understood the terms of the Protective Order, I agree to abide by and be bound by the terms of the Protective Order. I understand that any unauthorized use or disclosure of Confidential or Confidential PHI Information or other violation of the Order may subject me to sanctions, including the sanctions permitted upon a finding of contempt of court. I consent to the exercise of personal jurisdiction by the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, in all matters related to this Order.

EBR4433765

Name:

Date:

Address:

Signature:
