

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 1:05cv431
vs.)	
)	Hon. Sandra S. Beckwith, C.J.
FEDERATION OF PHYSICIANS AND)	
DENTISTS, <i>et al.</i> ,)	Hon. Timothy S. Hogan, M.J.
)	
Defendants.)	

**Stipulated Protective Order Governing Designation and Disclosure
of Confidential Information Submitted by Plaintiff United States and
Defendants Federation of Physicians and Dentists and Lynda Odenkirk**

In the interests of (i) ensuring an efficient and prompt resolution of this action;
(ii) facilitating discovery by the parties litigating this action; and (iii) protecting the parties' and
non-parties' confidential information from improper disclosure or use, plaintiff United States and
the non-settling defendants, Federation of Physicians and Dentists ("Federation") and Lynda
Odenkirk, have stipulated to and respectfully request the Court to enter, pursuant to Fed. R.
Civ. P. 26(c)(7), the following Protective Order:

A. DEFINITIONS

1. As used herein:

(a) "confidential information" means any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(7), produced by or in the possession or control of any protected person (as defined below).

(b) "disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part;

(c) "document" is defined as the term is used in Fed. R. Civ. P. 34(a);

(d) "investigation" means the Department of Justice's pre-Complaint inquiry into the matters at issue in this action.

(e) "non-settling defendants" means the Federation and Lynda Odenkirk.

(f) "party" or "parties" means plaintiff and/or any defendant in this action;

(g) "protected person" means any person or entity who has produced information or testified during the investigation either voluntarily or in response to a civil investigative demand from the Department of Justice, or who produces any information or testifies in this action voluntarily or in response to a discovery request or subpoena; and

(h) "this action" means the above-captioned action pending in this Court, including any pretrial, trial, post-trial or appellate proceedings.

B. DESIGNATION OF CONFIDENTIAL INFORMATION

2. A protected person may designate as confidential any information it has disclosed in connection with the investigation, or hereafter discloses in this action, to the extent such information constitutes confidential information as defined in Paragraph 1(a) of this Order. Such designations constitute a representation to the Court that such protected person (and counsel, if any) in good faith believes that the information so designated meets the standard set forth in Fed. R. Civ. P. 26(c)(7). Any production of information without it being designated as confidential will not thereby be deemed a waiver of any future claim of confidentiality concerning such information, which may thereafter be designated confidential in compliance with Paragraph 2 of this Order. However, any such subsequent designation will not apply retroactively to the disclosure of any information for which disclosure was proper when made or if the information was previously disclosed to any nonparty.

3. Confidential designation of investigative deposition transcripts and documents produced during the investigation is governed as follows:

(a) All transcripts of depositions taken by the Department of Justice during the investigation will be treated as confidential in their entirety for 28 days after the date the deponent or counsel for the deponent has received a copy of this Order from plaintiff. At any time during the first 21 days of the 28-day period, any deponent or counsel for the deponent may designate as confidential, in compliance with paragraph 2 of this Order, any portion of the transcript, by page and line, and any exhibits produced by the deponent or an affiliated entity. Within three business days following the lapse of the 21-day period, plaintiff's counsel must transmit to the non-settling defendants' counsel such confidentiality designations as may be made by others.

(b) All documents produced by protected persons to the Department of Justice during its investigation will be treated as if designated as confidential in their entirety for 28 days after the date the protected person has received of a copy of this Order from plaintiff. At any time during the first 21 days of the 28-day period, any protected person or counsel for the protected person, may designate as confidential, in compliance with paragraph 2 of this Order, any document or portion of a document produced to the Department of Justice as confidential by providing the Department of Justice with page numbers or other means of easily identifying the designated documents. Within three business days following the lapse of the 21-day period, plaintiff's counsel must transmit to the non-settling defendant's counsel such confidentiality designations as may be made by others.

4. Confidential designation of deposition transcripts and documents produced during this action is governed as follows:

(a) All transcripts of depositions taken in this action will be treated as if designated as confidential in their entirety for a period of ten business days after the date a full and complete copy of the transcript has been made available to the deponent or deponent's counsel. During the deposition or at any time during the ten-business-day period, any deponent or counsel for the deponent may designate as confidential, in accordance with paragraph 2 of this Order, any portion of the transcript, by page and line, and any deposition exhibits produced by the deponent or an affiliated entity. Such designations must be provided by the deponent or deponent's counsel to plaintiff's and the non-settling defendants' counsel.

(b) A protected person who designates as confidential any document or information produced in this action must stamp or label the face of each document with the

designation "CONFIDENTIAL." If the entire document is not confidential, the protected person must specify on the first page of the document the portions of the document that contain confidential information. Designation of documents as confidential that are produced electronically in this action may be accomplished by listing confidential pages.

5. This Order does not apply to information obtained from the public domain or other non-confidential sources regardless of whether such information is also contained in materials designated as confidential pursuant to this Order.

6. This Order does not preclude plaintiff or non-settling defendants raising with the Court whether any particular information designated as confidential is appropriately designated or whether any particular information designated confidential is admissible evidence at any evidentiary proceeding or trial in this case. No party concedes by complying with the procedures set forth in this Order that any information designated by any protected person as confidential is in fact confidential as that term is defined in paragraph 1(a) of this Order. However, no information designated as confidential pursuant to this Order may be disclosed, except as provided by this Order, unless and until the Court orders the release of such information from the confidentiality provisions of this Order.

C. DISCLOSURE OF CONFIDENTIAL INFORMATION

7. Except as otherwise authorized by this Order, information designated as confidential pursuant to this Order must not be disclosed to any person other than the individuals set forth below and may be disclosed to and used by those individuals only in connection with this action:

(a) the Court and all persons assisting the Court in this action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) Department of Justice attorneys, employees and independent contractors retained by the Department of Justice to assist in prosecution of this litigation or otherwise assist in the work of the Department;

(c) counsel acting for the non-settling defendants in this action and that counsel's employees and independent contractors (other than members, or former members, of defendant) assisting such outside counsel in the defense of this litigation;

(d) authors, addressees and recipients of particular information designated as confidential solely to the extent that they have previously had lawful access to the particular information disclosed or to be disclosed;

(e) persons (and their counsel) whom counsel for plaintiff or non-settling defendants believes in good faith to have, or have had, prior access to confidential information, or who have been participants in a communication that is the subject of the confidential information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they have or may have had access or that is the subject of the communication in which they have or may have participated; provided that, unless and until counsel confirms that any such persons have or have had access or were participants, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation;

(f) testifying or consulting experts retained by a party to assist in the prosecution or defense of this action, including employees of the firm with which the expert or

consultant is associated to the extent necessary to assist the expert's work in this action, provided that such experts and staff are not employed or affiliated in any other way with any defendant; and

(g) the defendant Federation's Executive Director, Jack Seddon, and defendant Lynda Odenkirk, who is also defendant Federation's Northeast Regional Director, when counsel for the non-settling defendants, in good faith, deems such disclosure necessary in defense of this action or in preparation for any deposition, hearing, or trial in this action, unless otherwise ordered by the Court.

8. Before any information designated as confidential may be disclosed to any person described in paragraph 7 of this Order, he or she must first read this Order or must have otherwise been instructed in his or her obligations under the Order by this Court or counsel for a party, and any person described in subparagraphs 7(f)-(g) of this Order shall have executed the agreement included as Appendix A hereto. Counsel for the party making the disclosure must retain the original of such executed agreement for a period of at least one year following the final resolution of this action. Each individual described in paragraph 7 of this Order to whom information designated as confidential is disclosed must not disclose that confidential information to any other individual, except as provided in this Order.

9. Notwithstanding the provisions of paragraphs 7 and 8 of this Order, nothing in this Order:

(a) limits a protected person's use or disclosure of its own information designated as confidential;

(b) prevents plaintiff or the non-settling defendants, subject to taking appropriate steps to preserve the further confidentiality of such information, from disclosing information designated as confidential either (1) to another court of law; or (2) as may be required by law; and

(c) prevents plaintiff, subject to taking appropriate steps to preserve the further confidentiality of such information, from disclosing information designated as confidential (1) to duly-authorized representatives of the Executive Branch of the United States Government; (2) in the course of any other legal proceedings to which the United States is a party; (3) for the purpose of securing compliance with a Final Judgment in this action; or (4) for law enforcement purposes, or as may be required by law.

10. The party intending to make any disclosure pursuant to paragraph 9 of this Order must give notice to that effect to the protected person who designated as confidential the information to be disclosed at least 10 business days prior to making any such disclosure.

D. USE OF CONFIDENTIAL INFORMATION IN LITIGATION

11. Information designated as confidential that is filed in this action with the Court in connection with a dispositive motion, will generally be disclosed on the public record after compliance with the following process: The party filing such information, in connection with a dispositive motion, must submit the document(s) containing the information designated as confidential to the Clerk of the Court in a sealed envelope with the following designation on the face of the envelope: "This envelope contains information designated as confidential pursuant to Order of the Court and may not be disclosed except as authorized by that Order without further

order of the Court.” Within five business days after the date of filing, the filing party must provide notice to all protected persons who produced the information designated as confidential that was filed under seal. Upon receiving such notice, protected persons must attempt to resolve confidentiality issues with the party filing such information, such as redacting irrelevant confidential information or withdrawing a confidential designation. If confidentiality designations remain unresolved, within ten business days after the date of receipt of such notice, protected persons must file with the court and serve on plaintiff and the non-settling defendants, their objection to public disclosure of specified information they had designated as confidential. If no objections to disclosure are filed with the Court within the time permitted, the filing party must file, within five business days following lapse of the period for filing objections, a public version unsealing the documents (with redactions to exhibits, if applicable) previously submitted under seal. If a protected person files with the Court timely objections to disclosure of its confidential information, following the Court’s review and order resolving all such objections, the party that made the initial filing under seal must, within seven business days after receipt of the order, refile its papers, in compliance with the Court’s rulings on what information, if any, will continue to be protected from public disclosure.

12. Information designated as confidential that a party submits as an exhibit or uses in cross examination at trial will generally be disclosed on the public record after compliance with the following process: Within three business days after submission of exhibit lists and deposition citations to the Court, plaintiff and the non-settling defendants must provide notice to protected persons of all exhibits and citations listed by that party that include information the protected person has continued to designate as confidential. Within three business days after

receipt of such notice, the protected person must advise the party listing the information designated as confidential whether it objects to the potential public disclosure of that information at trial and, if it does, shall attempt to resolve objections by agreed upon redactions. Within seven business days after receipt of such notice, if the protected person continues to object to potential public disclosure at trial of its information designated as confidential, the protected person must file its objections with the Court seeking to limit disclosure of the information at trial in this action. At trial, parties may use for cross examination documents designated as confidential, which were not identified on any parties' exhibit list submitted prior to trial. Any such documents used at trial for cross examination of a witness that were initially produced by the witness, the witness's employer, or the Federation will be presumptively non-confidential. Any such documents used at trial for cross examination of a witness that were initially produced by any other protected party will require at least 48 hours notice to the protected party, who can seek to object with the Court to public use of the document at trial.

E. PROCEDURES UPON TERMINATION OF LITIGATION

13. Within 90 days after receiving notice of the entry of an order, judgment or decree terminating this action regarding all parties, all persons having received information designated as confidential must either make a good faith effort to return such material and all copies thereof to the protected person (or the person's counsel if represented by counsel) that produced it, or destroy all such confidential material and certify that fact in writing to the party or protected person. Counsel for plaintiff and the non-settling defendants will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that plaintiff's

employees and defendant's counsel and such counsel's employees must not disclose the portions of court papers, deposition transcripts, exhibits or work product containing information designated as confidential to any person except pursuant to Court order or agreement with the protected person that produced the information designated as confidential. All confidential materials returned to the parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph. Nothing in this paragraph, however, restricts the rights of the parties under Paragraph 9 of this Order, or the rights of the plaintiff to retain and use confidential materials for law enforcement purposes or as otherwise required by law.

F. RIGHT TO SEEK MODIFICATION

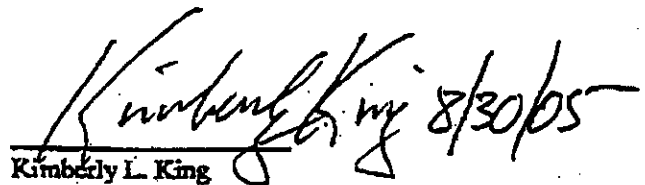
14. Nothing in this order prevents any party or protected person from seeking modification of this order upon motion duly made pursuant to the Rules of this Court.

AGREED TO:



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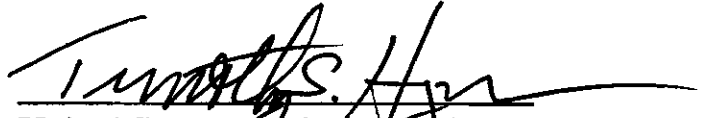
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Attorney for Defendant Federation of
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Attorney for Defendant Lynda Odenkirk

ORDER

SO ORDERED:

Date: August 3, 2005


United States Magistrate Judge
United States District Court

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 1:05cv431
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)	
Defendants.)	

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purpose of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the Southern District of Ohio solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 200_.

(SIGNATURE)