

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**JOEL Q. HACK**, an individual, and  
**WREN BEAULIEU-HACK**, an individual,

*Plaintiffs,*

Case No.: 2:18-cv-13330  
Hon. Marianne O. Battani

v.

**THE CHARTER TOWNSHIP OF MILFORD**,  
a Michigan municipal corporation, **TOWNSHIP  
OF MILFORD BOARD**, a public body, **DONALD  
D. GREEN**, in his personal capacity and in his  
official capacity as Supervisor of Milford Township,  
and **TIMOTHY C. BRANDT**, in his personal capacity  
and in his official capacity as Building and Zoning  
Administrator of Milford Township,

*Defendants.*

---

**PLAINTIFFS' MOTION FOR ENTRY OF QUALIFIED  
PROTECTIVE ORDER AND INCORPORATED BRIEF IN SUPPORT**

Plaintiffs, through their counsel, Maddin, Hauser, Roth & Heller, P.C., move pursuant to Fed R. Civ. P. 26(c), and state for their Motion for Entry of Qualified Protective Order, attached as **Exhibit 1**, as follows:

1. Defendants' misconduct in this case involves arbitrarily, capriciously, and discriminatorily misusing governmental powers, under color of law, to deprive Plaintiffs of their constitutionally-protected right to due process and property rights involving their home.

2. Plaintiffs' claims in this matter seek, in part, compensation for the mental distress and suffering experienced by Plaintiff Joel Hack as a result of Defendants' above misconduct; Mr. Hack continues to treat for a variety of medical conditions arising from, and exacerbated by, Defendants.

3. Defendants understandably seek to conduct discovery regarding Joel Hack's medical history, treatment, and non-economic damages.

4. Mr. Hack is willing to provide medical releases to Defendants so that Defendants may conduct the above discovery provided that Defendants stipulate to entry of an appropriate qualified protective order with respect to Mr. Hack's health information, as required under the Health Insurance Portability and Accountability Act ("HIPAA"). *See* 45C.F.R. § 164.512(e)(1)(iv)(A) and (B).

5. Plaintiffs' proposed qualified protective order, in conjunction with appropriate medical releases, will permit Defendants to obtain Mr. Hack's medical records and conduct depositions of Mr. Hack's treating physicians while respecting and protecting Mr. Hack's privacy rights under HIPAA.

6. Further, appropriate protection of Mr. Hack's privacy rights are particularly poignant in a case involving a matter of public interest and scrutiny: thousands of Milford citizens have been informed through public Board meetings of this ongoing litigation, and disclosure of Mr. Hack's medical information

without an appropriate protective order risks widespread dissemination of sensitive information.

7. Nonetheless, Defendants demand that Plaintiffs' qualified protective order permit Defendants to conduct *ex parte* communications with Mr. Hack's medical providers.

8. Defendants' demand is unreasonable and an unnecessary intrusion into Mr. Hack's HIPAA rights.

9. Further, Defendants' demand for *ex parte* communications, as opposed to depositions involving counsel of record, runs contrary to the goal of discovery: the open exchange of information pertinent to resolution of the lawsuit, as opposed to trial by ambush.

10. Plaintiffs' proposed qualified protective order strikes the appropriate balance between permitting Defendants to conduct necessary discovery while respecting Mr. Hack's Congressionally-recognized privacy rights pursuant to HIPAA.

11. Plaintiffs sought concurrence in this motion, and such concurrence was denied by Defendants.

**ACCORDINGLY**, Plaintiffs respectfully request that this Court grant this Motion and enter the qualified protective order attached hereto as **Exhibit 1**.

Respectfully submitted,

/s/ R.J. Cronkhite

R.J. Cronkhite (P78374)

Maddin, Hauser, Roth & Heller, P.C.

*Attorneys for Plaintiffs*

28400 Northwestern Hwy., Second Floor

Southfield, MI 48034

(248) 351-7017

[rcronkhite@maddinhauser.com](mailto:rcronkhite@maddinhauser.com)

Dated: February 15, 2019

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**JOEL Q. HACK**, an individual, and  
**WREN BEAULIEU-HACK**, an individual,

*Plaintiffs,*

Case No.: 2:18-cv-13330  
Hon. Marianne O. Battani

v.

**THE CHARTER TOWNSHIP OF MILFORD**,  
a Michigan municipal corporation, **TOWNSHIP  
OF MILFORD BOARD**, a public body, **DONALD  
D. GREEN**, in his personal capacity and in his  
official capacity as Supervisor of Milford Township,  
and **TIMOTHY C. BRANDT**, in his personal capacity  
and in his official capacity as Building and Zoning  
Administrator of Milford Township,

*Defendants.*

---

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION  
FOR ENTRY OF QUALIFIED PROTECTIVE ORDER**

**STATEMENT OF ISSUE PRESENTED**

1. Are Plaintiffs entitled to entry of the qualified protective order attached as **Exhibit 1** with respect to the release of their health information to Defendants?

Plaintiffs answer: Yes

Defendants answer: No

**CONTROLLING AUTHORITY**

Fed. R. Civ. P. 26(c)

and 45 C.F.R. § 164.512

## I. ARGUMENT

Federal Rule of Civil Procedure 26(c) provides that a Court may, “for good cause,” issue an order to protect a party subject to discovery “from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). As relevant here, Rule 26 specifically authorizes the Court to issue a protective order “prescribing a discovery method other than the one selected by the party seeking discovery.” Fed. R. Civ. P. 26(c)(1)(C).

The Health Insurance Portability and Accountability Act (“HIPAA”) set forth the rules for the release of health information governing the doctor-patient privilege and “ushered in a ‘strong federal policy in favor of protecting the privacy of patient medical records.’” *Thomas v. 1156729 Ontario Inc.*, 2013 WL 5785853, at \*2 (E.D. Mich. Oct. 28, 2013). Accordingly, HIPAA and its implementing regulations prohibit medical providers from disclosing medical records and other protected health information. HIPAA states that only “expressly authorized” protected health information may be disclosed in judicial proceedings. *See* 45 C.F.R. § 164.512(e)(1)(i). HIPAA allows a medical provider to disclose protected health information in response to a court order, or in response to a subpoena or discovery requests, where “the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court” or “the party seeking the protected health information has requested a



qualified protective order from such court.” 45 C.F.R. § 164.512(e)(1)(iv)(A) and (B).

The referenced HIPAA regulations require a qualified protective order in place before obtaining any medical records of Plaintiffs, and Plaintiffs seek entry of such a qualified protective order, attached as **Exhibit 1**, before their health information is released to Defendants in this case.

Plaintiffs’ proposed qualified protective order strikes the appropriate balance between permitting Defendants to conduct necessary discovery while respecting Mr. Hack’s Congressionally-recognized privacy rights pursuant to HIPAA.

Conversely, Defendants demand that Plaintiffs’ qualified protective order permit Defendants to conduct *ex parte* communications with Mr. Hack’s medical providers. Defendants’ demand is unreasonable and an unnecessary intrusion into Mr. Hack’s HIPAA rights.

## II. CONCLUSION

For the reasons stated above, Plaintiffs request that this Court grant their Motion and enter the Qualified Protective Order attached hereto as **Exhibit 1**.

Respectfully submitted,

/s/ R.J. Cronkhite

R.J. Cronkhite (P78374)

Maddin, Hauser, Roth & Heller, P.C.

*Attorneys for Plaintiffs*

28400 Northwestern Hwy., Second Floor  
Southfield, MI 48034

(248) 351-7017  
[rcronkhite@maddinhauser.com](mailto:rcronkhite@maddinhauser.com)

Dated: February 15, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on **February 15, 2019**, I electronically filed the above document(s) with the Clerk of the Court using the ECF system, which will send notification of such filing to those who are currently on the list to receive e-mail notices for this case.

/s/ R.J. Cronkhite

*Attorney for Plaintiffs*