

**Exhibit S**

**1/4/19 Email from Richard Stokan**

**Richard Stokan**

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**From:** Richard Stokan  
**Sent:** Friday, January 04, 2019 12:15 PM  
**To:** R.J. Cronkhite  
**Cc:** Carolyn Rowland; James Tamm  
**Subject:** RE: Milford - PO  
**Attachments:** QPO -draft.docx

RJ,

To follow up on Jim's email, if the "confidential information" you are referencing includes medical records attached is a copy of our proposed Qualified Protective Order. I added Mrs. Hack but if you will represent in writing that she has no medical damages I will remove her name.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") governs physician patient privilege and specifically includes an exception that allows for the disclosure of covered information for purposes of judicial and administrative proceedings. See 45 C.F.R. § 164.512(e)(1). Under this section a physician may disclose protected health information to comply with a court order, subpoena or discovery request if the patient has been given notice of the request for information or the physician receives "satisfactory assurance" from the party seeking the information that reasonable efforts were made to secure a qualified protective order.

As part of our practice the record copy companies our office uses obtains signed authorizations from the plaintiffs before obtaining medical records which satisfies these requirements. Federal courts, and specifically the U.S. District Court for the Eastern District of Michigan have also recognized that 45 C.F.R. § 164.512(e)(1) authorizes *ex-parte* meetings. See *Palazzolo v. Mann*, 2009 'J.S. Dist. LEXIS 22348, 2009 WL 728527 (E.D.Mich. Mar. 19, 2009); see also 45 C.F.R. §160.103 (HIPAA applies to both oral and written information); *Congress v. Tillman*, No. 09-10419, 2009 WL 1738511, at \*1 (E.D.Mich. June 16, 2009) (holding that defendants may conduct an *ex parte* oral interview with plaintiff's treating physician where a qualified protective order, consistent with 45 C.F.R. § 164.512(e)(1), is in place). Thus, unless you can set forth a specific reason consistent with supporting case law for restricting our access to the Plaintiffs' medical information which has been put at issue by your claims against our clients we have a right to obtain the records and conduct *ex-parte* meetings with treating physicians. I believe the attached qualified protective order complies with all of the requirements of 45 C.F.R. § 164.512(e)(1) and is appropriate to protect any concerns you may have regarding protected medical information.

The proposed protective order you attached does not address HIPAA or medical information but instead appears to be a sample protective order contemplated under Fed R. Civ 26(c)(1)(G) to protect trade secrets or confidential research typically relating to commercial litigation cases. As Jim referenced in his response, protective orders have never been required to obtain medical records under HIPAA. The disclosure of medical information is already contemplated by HIPAA. However, if you believe we have requested some other type of "secret" or "confidential research, development, or commercial information" please advise what type of information you believe should be protected and we will consider whether it is even necessary to this litigation.



**O'Connor | DeGrazia | Tamm | O'Connor, P.C.**  
Attorneys At Law

Sincerely,

Richard V. Stokan, Jr., Esq.  
O'Connor, DeGrazia, Tamm & O'Connor, P.C.  
40701 Woodward Avenue, Suite 105  
Bloomfield Hills, Michigan 48304  
ph: (248) 433-2000/ fax: (248) 433-2001  
**Direct Dial (248) 433-2012**  
E-mail: rvstokan@odtlegal.com  
Website: http://www.odtlegal.com/

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**From:** James Tamm  
**Sent:** Friday, January 04, 2019 8:08 AM  
**To:** R.J. Cronkhite  
**Cc:** Carolyn Rowland; Richard Stokan  
**Subject:** RE: Milford - PO

What sensitive, confidential information have we requested? There is nothing confidential about engineering plans. You asserted that Mr. Hack suffered injury and I am entitled to any information that would document such an injury. In more than 30 years of handling medical malpractice claims where the most sensitive personal information is at issue, I have never had a protective order issued regarding medical information obtained through discovery. To disclose such information would violate HIPPA and a protective order is not required. I previously proposed a qualified protective order that would allow me access to information from health care providers and would require that I destroy any records received. I will agree to the order that was previously sent to you.



O'Connor | DeGrazia | Tamm | O'Connor, P.C.  
Attorneys At Law

James E. Tamm  
Attorney at Law  
O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C.  
40701 Woodward Avenue, Ste. 105

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**From:** R.J. Cronkhite [mailto:RCronkhite@maddinhauser.com]  
**Sent:** Wednesday, January 02, 2019 7:00 PM  
**To:** Richard Stokan <rvstokan@odtlegal.com>; James Tamm <jetamm@odtlegal.com>  
**Subject:** Milford - PO

Your clients have requested sensitive, confidential information in their discovery requests. I'd like to provide this information subject to a protective order.

Will you consent to the attached PO?

R.J.



**R.J. Cronkhite**  
Shareholder  
Maddin, Hauser, Roth & Heller, P.C.  
28400 Northwestern Highway  
Suite 200-Essex Centre  
Southfield MI 48034  
Receptionist (248) 354-4030  
[www.maddinhauser.com](http://www.maddinhauser.com)  
[vcard](#)

(248) 351-7017 direct dial  
(248) 359-6146 direct fax  
(734) 558-5809 mobile  
RCronkhite@maddinhauser.com

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

Plaintiffs,

v.

Hon. Marianne O. Battani  
Case No. 2:18-cv-13330-MOB-EAS  
Removed from Oakland County  
Circuit Court  
(Case No. 18-169268-CH)

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.

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MICHELLE C. HARRELL (P48768)  
R.J. CRONKHITE (P78374)  
Maddin, Hauser, Roth & Heller, P.C.  
Attorneys for Plaintiffs  
28400 Northwestern Hwy, 2<sup>nd</sup> Floor  
Southfield, MI 48034  
(248) 351-7017  
[rcronkhite@maddinhauser.com](mailto:rcronkhite@maddinhauser.com)

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JAMES E. TAMM (P38154)  
RICHARD V. STOKAN, JR. (P61997)  
O'Connor, DeGrazia, Tamm &  
O'Connor, P.C.  
Attorneys for Defendants  
40701 Woodward Avenue, Ste. 105  
Bloomfield Hills, MI 48304  
(248) 433-2000  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)  
[rvstokan@odtlegal.com](mailto:rvstokan@odtlegal.com)

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**STIPULATED QUALIFIED PROTECTIVE ORDER**

Upon Stipulation of the Parties, and the Court being otherwise fully advised  
in the premises;

**IT IS HEREBY ORDERED** that Defendants are granted a Qualified Protective Order to meet with Plaintiffs JOEL Q. HACK and WREN BEAULIEU-HACK's health care providers as follows:

- (A) Defense counsel shall be permitted to hold private, *ex parte* meetings/discussions with Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers related to this action and the contents of the discussions need not be disclosed by defense counsel.
- (B) Defendants are prohibited from using or disclosing plaintiffs' protected health information for any purpose other than this litigation.
- (C) Defendants are required to either return or destroy any documentary health protected information at the end of the litigation.
- (D) Defense counsel shall be required to give clear and explicit notice to Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers, both as to the purpose of any such *ex parte* meetings/discussions and to the fact that the *ex parte* meetings and/or discussions are not required.
- (E) Defense counsel shall advise Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers that they may have their own counsel present during any such meetings/discussions.
- (F) Defense counsel need not obtain Plaintiffs/Plaintiffs counsel's consent before defense counsel may interview Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers *ex parte*.
- (G) Plaintiffs' counsel may not attend the *ex parte* meetings with Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers.

- (H) Plaintiffs' counsel shall not attempt to discourage Plaintiffs JOELQ. HACK and WREN BEAULIEU-HACK's treating physicians/medical providers from participating in the *ex parte* meetings or otherwise interfere with the *ex parte* meetings.
- (I) Defense counsel's right to *ex parte* meetings and/or discussions shall end upon the dismissal of this action and/or upon entry of a final judgment.

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CIRCUIT COURT JUDGE

**AGREED TO BY:**

/s/

R.J. CRONKHITE (P78374)  
Attorney for Plaintiff  
[rcronkhite@maddinhauser.com](mailto:rcronkhite@maddinhauser.com)

/s/

JAMES E. TAMM (P38154)  
RICHARD V. STOKAN, JR. (P61997)  
Attorneys for Defendants  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)  
[rvstokan@odtlegal.com](mailto:rvstokan@odtlegal.com)