

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL
CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

FLORIDA ONCOLOGY NETWORKS, P.A.,
et al.

Plaintiffs,

COMPLEX BUSINESS COURT
(Honorable Renee A. Roche)

v.

CASE NO.: 48-2008-CA-0044750

MICHAEL PIRKOWSKI, et al.

Defendants.

**STIPULATED AND AGREED CONFIDENTIALITY ORDER PERTAINING TO THE
PRODUCTION OF DOCUMENTS**

THIS MATTER having come before the Court on the parties' stipulation and agreement, and the Court having reviewed the file and being otherwise duly advised of these and other matters, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Parties' stipulation and request for entry of this Confidentiality Order is **GRANTED** as provided hereinafter.

2. All discovery (depositions, interrogatories and documents produced) by a party in this case shall only be used to defend or assert claims in this case and may not be used for any other purpose.

3. In responding to another party's discovery request, each party may designate as Confidential any document, thing, or information that party believes contains trade secrets, confidential research, development, commercial or financial information or any other proprietary or confidential business information.

4. A person not a party to this litigation who produces discovery materials herein shall have the same rights as a party to designate those materials as Confidential, and the use of the discovery materials by the parties shall be governed in all respects by this Confidentiality Order, provided the nonparty designated the materials as "**Confidential**".

5. All documents, things, or information designated as Confidential, including all copies, extracts, or summaries of and in information obtained from any documents, things, or information designated as Confidential ("**Confidential Material**"), shall be used in connection with the litigation and appeal of this litigation only. Confidential Material shall not be used for any business, competitive, or other purpose, and shall not be disclosed to any other person or entity except as provided in this Confidentiality Order.

6. Any of the following methods shall be sufficient to designate material as confidential ("**Confidential Designation**"):

- a. prominently marking the material "**Confidential**" at or before the time of its production;

b. designating material by Bates label or some similar pagination system range as “**Confidential**” at or before the time of its production;

c. designating a storage medium of material produced in electronic format as “**Confidential**” at or before the time of its production.

d. providing a cover page with a marking of Confidential for a series of documents that are related or of the same type.

Inadvertent failure to make a Confidential Designation may be corrected by supplemental written notice given as soon as practicable.

7. If a party disagrees with a Confidential Designation, that party may serve a written notice of objection to the designation upon the designating party. The objecting and designating parties shall attempt to resolve their dispute in good faith within ten (10) days of the designating party’s receipt of the objection. If the parties are unable to resolve their dispute within ten (10) days, the party seeking to uphold the “**Confidential**” designation shall petition the Court for a Protective Order within ten (10) days. Failure to do so will void the Confidential Designation and will waive any contention that the Confidential Designation is proper. If a party petitions the Court for a Protective Order pursuant to this Paragraph, that party shall have the burden to show that its Confidential Designation was proper. All material bearing a Confidential Designation shall be treated as Confidential Material unless a Court Order finds otherwise.

8. Confidential Material may be made available to and inspected by the following only:

a. The parties and their officers, employees, consultants, and agents that are assisting in the prosecution or defense of this action (including Defendant Samantha Pirkowski, irrespective of whether she is a party to this litigation or not);

b. Counsel for the parties¹ and their employees, consultants, and agents;

c. The Court;

d. Court reporters designated by the parties or the undersigned;

e. Expert witnesses for the parties, their employees, consultants, agents, and counsel, to the extent that such disclosure is necessary for them to prepare for this case; and

f. Any other witnesses and their counsel, to the extent that such disclosure is directly relevant to the testimony of the witness.

9. Either party may designate materials as being “**Confidential Restricted**” which requires a higher degree of confidentiality.

Confidential Material designated as Confidential Restricted (“**Confidential Restricted Material**”) may be so designated by using the designation

¹

Counsel includes attorneys of record and employees of their law firms.

“Confidential Restricted” through any means specified in Paragraph 6 of this Confidentiality Order. Any objection to a Confidential Restricted Designation shall be governed by Paragraph 7 of this Confidentiality Order.

10. Confidential Restricted Material may be made available to and inspected by the following only:

a. All persons and entities identified in Paragraph 8(b) through 8(e), inclusive, of this Confidentiality Order; and

b. A party who produces documents that another party subsequently designates as Confidential Restricted Material (i.e., the subsequent designation of such documents as Confidential Restricted Materials does not affect the right of the producing party to continue to have access to that material as provided herein); and

c. Any witness, including a party, and their counsel on the condition that such persons (a) agree in writing to maintain the confidentiality of the information and (b) may be shown the Confidential Restricted Material only during and not prior to their testimony on direct or redirect at deposition or hearing, and may not retain any such material.

11. Pursuant to 45 C.F.R. §164.512(e)(1)(iv), the parties agree to the entry the joint qualified protective order attached hereto as Exhibit “A” which the Court will enter concurrently herewith to protect the production of patient protected

health information as defined under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) which arises in discovery. All discovery produced by either party that contains patient protected health information shall be labeled “**Confidential Restricted Material(HIPAA)**” For purposes hereof, Confidential Restricted Material (HIPAA) shall be treated in the same manner as Confidential Restricted Material, but designated differently to make the receiving party aware that these materials are HIPAA protected.

12. If a lawyer wishes to show Confidential or Confidential Restricted Material to a witness who is not allowed to see the material under this Confidentiality Order including at deposition or on cross examination, that lawyer may do so only if he or she notifies in writing each other party as to its proposed use of the Confidential or Confidential Restricted Material prior to making the disclosure. If a party objects to such disclosure at any time prior to the time of disclosure, the disclosure shall not be made and a written basis for the objection shall be provided to the other parties within five (5) business days. Objections pursuant to this Paragraph shall be governed by Paragraph 7 of this Confidentiality Order.

13. Disclosure of Confidential Material or Confidential Restricted Material shall be consistent with this Confidentiality Order. If any disclosure is sought that is inconsistent with this Confidentiality Order, the person seeking to

disclose shall provide each other party with notice of the intended disclosure by facsimile transmission, email or hand-delivery (**Inconsistent Disclosure Notice**). The Inconsistent Disclosure Notice shall be identified with the heading ***“INCONSISTENT DISCLOSURE NOTICE”*** and shall identify with specificity the material to be disclosed and the identity of the person to whom disclosure is sought. The Inconsistent Disclosure Notice shall be received not less than five (5) business days prior to intended disclosure, or such period as is mutually agreeable to the parties. If a party objects in writing to such disclosure at any time prior to the time of disclosure, the inconsistent disclosure shall not be made. Objections pursuant to this Paragraph shall be governed by Paragraph 7 of this Confidentiality Order.

14. In the event that any Confidential Material or Confidential Restricted Material is used in a deposition, such material shall not lose its status as Confidential Material or Confidential Restricted Material through such use, and the parties shall take all steps necessary to protect the confidentiality of the Confidential Material or Confidential Restricted material during and after such use.

15. The Lawyer using Confidential Material or Confidential Restricted Material in a deposition shall direct the court reporter at the beginning and end of

any questioning involving Confidential Material or Confidential Restricted Material to designate such questioning as Confidential or Confidential Restricted.

16. The parties shall also be entitled to designate responses to deposition questions or other discovery as being Confidential or Confidential Restricted even if there are not any specific materials identified in the question and the procedure set forth herein shall be followed. The portion of the transcript so designated shall be deemed Confidential Material or Confidential Restricted Material. Any objection to such designation shall be governed by Paragraph 7 of this Confidentiality Order.

17. Unless all parties consent in writing or on the record, only persons identified in Paragraph 8 may be present at a deposition involving Confidential Material and only persons identified in Paragraph 10 may be present at a deposition involving Confidential and/or Confidential Restricted Material, and all persons present shall be bound by this Confidentiality Order not to disclose the testimony of the deponent pertaining to Confidential Material except as is provided in this Confidentiality Order. If any persons are excluded from the deposition under this provision, they shall only be excluded while the confidential matters are discussed and shall be entitled to return to the deposition upon completion of questioning on the confidential matters.

18. This Confidentiality Order shall be effective as of the date upon which the Action was first filed and shall apply and be enforceable from that date forward with respect to all discovery in this matter, including any material produced at any time after this litigation commenced.

19. This Confidentiality Order shall not be construed as a waiver of any party's right to object to admission of the Confidential Material or Confidential Restricted Material at any hearing.

20. This Confidentiality Order shall not be construed to impair any party's right to object to any discovery request.

21. In the event that any party is served with a subpoena or other form of legal process requesting Confidential Material or Confidential Restricted Material ("**Outside Request**"), the party receiving an Outside Request will provide the other parties with written notice that an Outside Request was received together with a copy of the Outside Request itself. The party receiving the Outside Request shall not produce the Confidential Material or Confidential Restricted Material for ten (10) business days after the other parties' receipt of written notice of the Outside Request, unless the other parties provide written notice that the other parties waive the protections of this Confidentiality Order with respect to the Outside Request.

22. At the conclusion of the action, all Confidential Material and Confidential Restricted Material shall be returned to the producing party no later than thirty (30) days after the rendition of an unappealed or unappealable final Order in this action. In the alternative, counsel for the parties may certify by letter that all Confidential Material and Confidential Restricted Material has been destroyed no later than thirty (30) days after the rendition of an unappealed or unappealable final order in this action.

23. If any material as to which a party claims privilege is inadvertently produced during discovery in this proceeding, such inadvertent production shall not be a waiver of any claim or privilege by the asserting party. Upon receiving notice of the inadvertent production of a privileged document, the other parties shall immediately return to the party asserting the privilege all copies of the documents as to which a claim of privilege is asserted. This provision is without prejudice to any party's right to move or make application for an order directing that privileged documents already in the possession of another party be returned to the party asserting the privilege and to seek to restrict the use of the documents or information contained therein. This provision shall not be deemed a waiver of the right of any party to challenge a claim of privilege.

24. No document, thing, information, or material produced in discovery may be used to contact consumers who are not parties or agents of parties to this case.

25. In the event any material designated Confidential or Confidential Restricted under this Confidentiality Order is used, described, characterized, excerpted or referenced in, or attached to, any court proceeding or submission in connection with this litigation: (I) it shall not lose its confidential status through such use; (ii) the parties shall take all steps reasonably required to protect its confidentiality during such proceedings; and (iii) the party shall file such material under seal in accordance with BCP 5.16.

DONE AND ORDERED this 20th day of August, 2008 in Chambers at Orlando, Orange County, Florida.

/s/The Honorable Renee A. Roche
Circuit Court Judge – Division 32

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2008, the foregoing was submitted for filing to the Clerk of the Complex Business Litigation Court by using the Case Management/Electronic Case Filing (“CM/ECF”) system which will send a Notice of Electronic filing to the following listed CM/ECF participants: Kevin K. Ross, Esq., Foley & Lardner, LLP, 111 N. Orange Avenue, Suite 1800, Orlando, Florida 32801; James E. Foster, Esq., Akerman Senterfitt, 420 S. Orange Avenue, Suite 1200, Orlando, Florida 32801; and C.Gene Shipley, Esq., Gray Robinson, P.A., 301 E. Pine Street, Suite 1400, Orlando, Florida 32801.

/s/Sheri Presutti
Judicial Assistant