

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In Re: Medical Informatics Engineering,
Inc., Customer Data Security Breach
Litigation
(MDL 2667)

Cause No. 3:15-MD-2667

This Document Relates to All Cases

REVISED STIPULATED PROTECTIVE ORDER OF CONFIDENTIALITY

It appearing that certain information, documents, and things of the parties subject to discovery in the above-captioned action is likely to involve the disclosure of confidential information, including by way of example and not limitation, financial, marketing, technical, licensing, research and development and other commercial information (hereinafter referred to as “Confidential Information”), that the parties reasonably believe to comprise sensitive and valuable information whose disclosure could cause a party competitive harm:

IT IS HEREBY STIPULATED by the attorneys for the parties, and approved by the Court, that pursuant to Federal Rule of Civil Procedure 26(c)(1) and Federal Rule of Evidence 502(d):

1. This Stipulation and Protective Order shall apply to all information, documents, and things subject to discovery in this action, including, without limitation, testimony adduced at depositions upon oral examination or upon written questions pursuant to Rules 30 and 31, answers to Interrogatories pursuant to Rule 33, documents produced pursuant to Rule 34, information obtained from inspection of premises or things pursuant to Rule 34, and answers to requests for admission pursuant to Rule 36. This Protective Order supersedes all prior orders entered in actions in MDL No. 2667 prior to their transfer to the MDL and governs discovery that has already been produced and discovery to be produced in the future.

2. The term “Confidential Information” means trade secrets and other information that is of a proprietary, business, financial, or technical nature and not readily available to competitors, potential competitors, or the public, the value of which arises from its secrecy and the disclosure of which (whether separately or in conjunction with other information being produced) has the potential for causing competitive harm to it or giving a competitive advantage to others, but is limited to the following categories:

- The parties’ financial records;
- The parties’ sales, costs, and pricing records;
- Customer information;
- Information of third parties who are not customers of MIE but whose information exists on MIE systems as part of the customer services provided by MIE, this would include PII and PHI of potential class members;
- Vendor information;
- Computer code, associated developer and programmer materials, logs, and similar material that related to proprietary software and its function, information related to MIE’s critical business system;
- Security protocols, penetration and vulnerability test parameters, test results, audit reports addressing MIE’s critical software and hardware integrity;
- Network configuration, including such things as interface certificate credentials, encryption standards, IP addresses of servers and network diagrams, administrative and user account information; and
- Other highly confidential information the exploitations of which could precipitate further hostile acts against MIE’s network environment.

The categories outlined above have the potential for causing competitive harm to MIE or giving its competition a competitive advantage by allowing them to review and utilize such information to duplicate MIE’s intricate, highly detailed, and unique network. Moreover, the categories of information outlined above have the potential to lead to exploitations of which could precipitate further hostile acts against MIE’s network environment.

The term “trade secret” means information that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Indiana Uniform Trade Secrets Act, Ind. Code 24-2-3-2.

Any party to this litigation or any third-party covered by this Order, who produces or discloses any Confidential Information, including, without limitation, any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER” (hereinafter “Confidential”).

3. Any party to this litigation shall have the right to designate as being produced for “Attorneys’ Eyes Only” extremely sensitive Confidential Information containing detailed technical information about Defendant’s information security policies and practices, or any other similar information that would subject Defendant to a substantial security risk of another cyber attack. Any party to this litigation or any third-party covered by this Order, who produces or discloses any Attorneys’ Eyes Only Information, including, without limitation, any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the forgoing or similar legend: “Confidential Information – Attorneys’ Eyes Only”.

4. Third parties producing documents in the course of this litigation may also designate documents as “Confidential” or “Confidential Information – Attorneys’ Eyes Only”, subject to the same protections, obligations and constraints as parties in this litigation. A copy of the Protective Order shall be served along with any subpoena or document request served on third parties in connection with this action. All documents produced by such third parties shall be treated as “Confidential Information – Attorneys’ Eyes Only” for a period of fourteen days from the date of their production, and during that period any party or third party may designate such documents as “Confidential” or “Confidential Information – Attorneys’ Eyes Only” pursuant to the terms of the Protective Order.

5. The parties agree to produce Confidential Information only upon the condition that the information remains confidential.

6. The parties agree that a party's designation of material as confidential shall be made only after a bona fide determination that the material is, in fact, Confidential Information. The designation shall be made prior to, or contemporaneously with, production or disclosure of that material, except as set forth in Paragraph 19 below. All parties and non-parties shall have the right to object to the designation of Confidential Information by appropriate motion before the Court pursuant to the procedure set forth in Paragraph 14 below.

7. All Confidential Information shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal, or any other purpose whatsoever other than pursuing this litigation, including trials and any appeals herein, and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraph 8, unless and until the restrictions herein are removed either by written agreement of counsel for the parties or by order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential Information, provided that such advice and opinions shall not reveal the content of such Confidential Information except by prior written agreement of counsel for the parties or by order of the Court.

8. Confidential Information and the contents of Confidential Information may be disclosed only to the following individuals under the following conditions:

- a. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;
- b. Outside experts or consultants retained by outside counsel for purposes of this action, except that in no event shall any disclosure be made to employees, officers, or directors of any competitors of a party, irrespective of whether they are retained as an expert or consultant for a party. For this paragraph, "employees" of a competitor shall mean individuals employed by a competitor who "can control what will be done and how it will be done," as defined in the Internal Revenue Service's definition of a common-law employee.

- c. Secretarial, paralegal, clerical, duplicating, and data processing personnel of the foregoing;
- d. The Court and court personnel;
- e. Mediators, secretaries, paraprofessional assistants, and other employees of such mediators who are actively engaged in assisting the mediators in connection with this litigation;
- f. Any deponent may be shown or examined on any information, document, or thing designated Confidential if it appears that the deponent authored or received a copy of it, was involved in the subject matter described therein, or is employed by the party who produced the information, document, or thing, or if the producing party consents to such disclosure;
- g. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial, and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials;
- h. To the extent such disclosure is made, the party shall be advised of, become subject to, and agree in advance of disclosure to the provisions of this Protective Order requiring that the material and information be held as confidential. In the case of parties that are corporations or other business entities, "party" shall mean an employee of the company who has responsibilities that are related to the issues in this litigation; and
- i. Other persons that are designated by written agreement of court-appointed lead counsel for the plaintiffs and defendants to this MDL or by order of the Court to be permitted access to Confidential Information.

9. The parties and their attorneys shall ensure that all persons falling within the description of Paragraph 8 that receive Confidential Information are advised of the terms of this Protective Order and the confidential nature of the Confidential Information and that they are precluded from disclosing the information to any person and in any manner that is not required in the pursuit of this litigation, including any subsequent appeals. The parties receiving the Confidential Information must agree to comply with the terms of this Protective Order as a condition of receiving access to the Confidential Information. In addition, all persons falling within the description of Paragraph 8, subparts (b), (h), and (i) shall, before obtaining access to the Confidential Information, be advised of this Protective Order and personally sign and date the Endorsement of the Protective Order, attached hereto as Exhibit A. It shall be the responsibility of the counsel who shares Confidential Information with any such person to apprise them of this Order, require the person to sign Exhibit A, and thereafter maintain custody of the signed Exhibit A.

10. Information that is designated “Confidential Information – Attorneys’ Eyes Only” shall not be disclosed or made available by the receiving party or witness to persons other than (a) the attorneys-of-record for the parties in this litigation and employees of such attorneys, (b) independent experts or consultants engaged by attorneys-of-record in this litigation to whom it is necessary that the material be shown for purposes of prosecuting or defending this litigation, (c) other witnesses or persons to whom the producing party agrees in writing in advance of the disclosure, and (d) the Court and its staff. If any receiving party wishes to make available information or material designated as “Confidential Information – Attorneys’ Eyes Only”, that party or witness must take the following steps: (1) require that the person, as set forth in (a), (b), and (c) above, personally sign and date the Endorsement of the Protective Order, attached hereto as Exhibit B, and (2) provide the signed Endorsement of the Protective Order to counsel for the receiving party that will provide or make available the information designated as “Confidential Information – Attorneys’ Eyes Only” prior to making available the information or materials designated as “Confidential Information – Attorneys’ Eyes Only” to the persons set forth in (a), (b), and (c). The electronic storage of all material designated as “Confidential Information – Attorneys’ Eyes Only” must be encrypted with AES-256 bit encryption. The

password protection must, at a minimum, utilize a password which is twelve characters in length containing uppercase letters, lowercase letters, digits, and symbols. All passwords must be stored utilizing a password manager. At no point may an individual store a password on an unsecure server or in paper format. The storage of all material in paper format designated as “Confidential Information – Attorneys’ Eyes Only” must be stored in a secure locked area, such as a safe or a secure room with a deadbolt lock. All transmission of material designated as “Confidential Information – Attorneys’ Eyes Only” must be transferred via a secure file transfer protocol. No material designated as “Confidential Attorneys’ Eyes Only” may be transferred in paper format via First Class mail or courier service. This protocol applies not only to the materials designated as “Confidential Information – Attorneys’ Eyes Only”, but also to documents generated by counsel, their consultants or experts which contains information, statements or details, in whole or in part, from the “Confidential Information – Attorneys’ Eyes Only” materials, including but not limited to memorandums, draft word processing documents, communications, etc. Information designated as “Confidential Information – Attorneys’ Eyes Only” is entitled to all other protections extended to information designated as “Confidential Information” under this Protective Order.

11. Confidential material shall be used only by individuals permitted access to it under Paragraph 8. Confidential Information, copies thereof, and the information contained therein shall not be disclosed in any manner to any other individual until and unless (a) outside counsel for the party asserting confidentiality expressly waives the claim of confidentiality, or (b) the Court orders such disclosure.

12. Any person in possession of Confidential Information shall exercise reasonably appropriate care with regard to the storage, custody, or use of such Confidential Information in order to ensure that its confidentiality is maintained.

13. With respect to any depositions that involve disclosure of Confidential Information of a party to this action, such party shall have 30 days after receipt of the deposition transcript to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual, other than the individuals described in Paragraph 8

above, and the deponent during these 30 days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual, other than those described in Paragraph 8 above, during the 30 day period. Upon being informed that certain portions of a deposition are to be designated as Confidential Information, all parties shall immediately cause each copy of the transcript in their custody or control to be appropriately marked as confidential and limit disclosure of that transcript in accordance with Paragraphs 7 and 8 above.

14. The acceptance by a party of any information, document, or thing identified as “Confidential” or “Confidential Information—Attorneys’ Eyes Only” shall not constitute a concession that the information, document, or thing is confidential or attorneys’ eyes only. Subsequent to the acceptance of information, documents, or things identified as Confidential or Attorneys’ Eyes Only, a party may challenge the other party’s claim of confidentiality. If counsel for a party receiving documents or information designated as Confidential or Attorneys’ Eyes Only objects to such designation of any or all such items, the following procedure shall apply:

- a. Material or information claimed to be Confidential or Attorneys’ Eyes Only that is subject to a dispute as to whether it is, in fact, Confidential or Attorney’s Eyes Only shall, until further agreement of the parties or order of the Court, be treated as Confidential or Attorneys’ Eyes Only in accordance with the provisions of this Protective Order.
- b. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within 30 days and shall state with particularity the grounds for asserting that the document or information is Confidential Information or Attorneys’ Eyes Only. If the designating party or non-party makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith, in accordance with Local Rule 37-1, in an effort to resolve the dispute. If no timely written

response is made to the objection, the challenged designation will be deemed to be void. The decision to permit a party to subsequently reinstate a confidentiality designation that has been deemed void by the provisions of this Paragraph is within the discretion of the Court. If the Court permits the party to reinstate a confidentiality designation, the document shall be treated as an inadvertently disclosed document as set forth in Paragraph 19 below.

- c. If a dispute as to a confidentiality designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by joint telephone call with the adverse party or by letter before filing a formal motion for an order regarding the challenged designation.

15. In the event a party shall desire to provide access to information, documents, or things identified as Confidential Information to any person or category of persons, who are persons not included in Paragraph 8 hereof, the party shall notify the other party 30 days in advance of such access in writing and if the other party objects thereto, the party desiring to make disclosure shall move this Court for an order that disclosure of the Confidential Information to the person or category of persons at issue is permissible.

16. The portions of all transcripts, depositions, exhibits, answers to interrogatories, and other documents filed with the Court that previously have been designated by a party as Confidential Information, or any pleading or memorandum purporting to reproduce or paraphrase such information, shall comply with Local Rule 5-3. Any filing that contains both Confidential Information and information that is not Confidential shall be filed and made publicly available by, in addition to the sealed version, filing a publicly-available version that redacts the Confidential portions.

17. The special restrictions and obligations relating to Confidential Information shall not apply to any information that is not so marked and shall not apply to any information that the parties concerned agree, or the Court rules, is public knowledge, or becomes public knowledge other than as a result of disclosure as Confidential Information in this

litigation. The special restrictions and obligations shall not be deemed to prohibit the party receiving the same or its outside counsel from discussing with any person any Confidential Information if said person already has possession of the information to be discussed other than as a result of disclosure as Confidential Information in this litigation.

18. The use of Confidential Information as evidence at trial and the issue of whether the information shall be subject to any protections shall be determined by the Court at the appropriate time.

19. The production or disclosure of any Confidential Information made in connection with this action that a party claims was inadvertent and should not have been produced or disclosed without a confidentiality designation shall not be deemed a waiver in whole or in part of a subsequent claim of protected treatment under the Protective Order, either as to specific information and/or documents disclosed or as to any other information and/or documents in this MDL and in any other federal or state proceeding. In the event of a claimed inadvertent disclosure, the following procedures shall be followed:

- a. The party producing the document shall notify lead counsel for the opposing party in writing within a reasonable period of time from the discovery of the inadvertent production by specifically identifying the affected material;
- b. Upon written notice, the receiving party shall immediately mark and treat as confidential all copies of the affected material within their possession, custody, or control—including all copies stored in or downloaded from any litigation—support or other database, as well as all copies in the possession of experts, consultants, or others to whom the affected material was provided;
- c. If, after being notified of the inadvertent disclosure, the receiving party promptly disputes in writing the claim of confidentiality, that party may promptly present the information to the Court under seal for a

determination of the claim of confidentiality in the manner set forth in the Protective Order; and

- d. Pending resolution of the matter by the Court, the receiving party shall treat the affected material as Confidential Information subject to the full protections of the Protective Order.

20. Any party for good cause shown may apply to the Court for modification of this Protective Order, or the Protective Order may be modified by consent of the parties in writing with Court approval.

21. Any party and any interested member of the public may challenge the sealing and secreting of particular documents by motion filed with the Court.

APPROVED: *2/26/2016*

S/Susan Collins
U.S. Magistrate Judge

Judge, United States District Court

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

In Re: Medical Informatics Engineering,
Inc., Customer Data Security Breach
Litigation
(MDL 2667)

Cause No. 3:15-MD-2667

This Document Relates to All Cases

**ENDORSEMENT OF PROTECTIVE ORDER FOR MATERIAL
DESIGNATED AS "CONFIDENTIAL INFORMATION"**

I hereby attest to my understanding that information or documents designed "Confidential Information" are provided to me subject to the Protective Order regarding Confidential Information produced in discovery, entered _____, (the "Protective Order"), in the above-captioned litigation; I have been given a copy of and have read the Protective Order, and agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Protective Order, is a prerequisite to my review of any information or documents designated as confidential pursuant to the Protective Order.

I further agree that I shall not disclose to others, except in accord with the Protective Order, any confidential discovery material, in any form whatsoever, and that such confidential discovery material and the information contained therein may be used only for the purposes authorized by the Protective Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material and further information will continue even after this litigation concludes.

I further agree and attest to my understanding that if I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the Northern District of Indiana for the purpose of any proceeding relating to enforcement of the Protective Order.

I further agree to be bound by and comply with the terms of the Protective Order as soon as I sign this agreement, whether or not the Protective order has yet been entered as an order of the Court.

Date: _____

By: _____

EXHIBIT B

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

In Re: Medical Informatics Engineering,
Inc., Customer Data Security Breach
Litigation
(MDL 2667)

Cause No. 3:15-MD-2667

This Document Relates to All Cases

**ENDORSEMENT OF PROTECTIVE ORDER FOR MATERIAL
DESIGNATED AS “CONFIDENTIAL INFORMATION – ATTORNEYS’ EYES ONLY”**

I hereby attest to my understanding that information or documents designed “**Confidential Information – Attorneys’ Eyes Only**” are provided to me subject to the Protective Order regarding Confidential Information produced in discovery, entered _____, (the “Protective Order”), in the above-captioned litigation; I have been given a copy of and have read the Protective Order, and agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Protective Order, is a prerequisite to my review of any information or documents designated as “Confidential Information - Attorneys’ Eyes Only” pursuant to the Protective Order.

I further agree that I shall not disclose to others, except in accord with the Protective Order, any confidential discovery material, in any form whatsoever, and that such confidential discovery material and the information contained therein may be used only for the purposes authorized by the Protective Order.

I further agree and attest to my understanding that material designated as “Confidential Information – Attorneys’ Eyes Only” must be electronically stored, physically stored, and transmitted in accordance with paragraph 10 of the Protective Order.

I further agree and attest as to my understanding that material designated as “Confidential Information – Attorneys Eyes Only” must be returned to the producing party or destroyed at the conclusion of this matter, including any appeals. I further agree and attest to my understanding that the receiving party will provide this signed endorsement to the producing party identifying me as a recipient of materials designated as “Confidential Information - Attorneys’ Eyes Only” as well as identify the materials provided to me and make certification that I have destroyed the documents or returned such documents to the producing party.

EXHIBIT B

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material and further information will continue even after this litigation concludes.

I further agree and attest to my understanding that if I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the Northern District of Indiana for the purpose of any proceeding relating to enforcement of the Protective Order.

I further agree to be bound by and comply with the terms of the Protective Order as soon as I sign this agreement, whether or not the Protective order has yet been entered as an order of the Court.

Date: _____

By: _____