

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PATRICK DERMESROPIAN, D.D.S.,

Plaintiff,

v.

DENTAL EXPERTS, LLC d/b/a

**DENTAL DREAMS, LLC, DENTAL
DREAMS LLC, FIELD OF DREAMS
DENTAL MANAGEMENT, LLC,
SAMEERA HUSSAIN, D.D.S.,
KHURRAM HUSSAIN, PETER
STATHAKIS and DAVID WOLLE,**

Defendants.

Civ. No. 3:09-cv-30087

Hon. Michael A. Ponsor

Magistrate Judge Kenneth P. Neiman

**[PROPOSED] AGREED PROTECTIVE
ORDER**

This matter coming before the Court on the Parties' Agreed Motion for a Protective Order, good cause having been shown, IT IS HEREBY ORDERED:

1. **Scope of the Order.** This Order is binding upon the Parties, including their predecessors, successors, parents, subsidiaries, divisions and affiliated companies, companies under the direction and/or control of a Party or its owner(s), and their respective attorneys, agents, representatives, officers, employees and others as set forth in this Order.

2. **Designating Information "Confidential."** If a Party believes in good faith that information produced in connection with this action is confidential, proprietary, or a trade secret, including, but not limited to, patient identities, patient health and/or medical information, and/or pricing or other financial information, it may designate such information as "Confidential." Confidential information shall be used only for the purpose of preparing for and conducting pretrial, trial, and appellate proceedings in the pending litigation between the Parties relating to the facts and circumstances set out in Plaintiff's First Amended Verified Complaint and Demand

for Jury Trial, filed on or about November 23, 2009 (or any amendments thereto), and/or in Defendants' Answer thereto, filed on or about July 14, 2010, and may be disclosed only to the following: (a) counsel of record involved in the preparation and trial of this litigation, including any necessary support personnel under the control of such persons; (b) any independent experts retained by counsel for the purpose of consulting and/or testifying in this action and associates, assistants, and other personnel employed directly by such experts; (c) any Party, and any director, officer, employee and/or agent working for or on behalf of a Party who is requested by counsel for such Party to assist in this action; (d) the Court, Court personnel, and any certified court reporter transcribing any testimony; (e) any other persons the Parties agree to in writing or as recorded in a transcript, as, for example, in the case of a witness to be shown protected materials in a deposition; and (f) any other persons or entities ordered by the Court. Persons identified in subsection (b) of this Paragraph shall not review any Confidential information until he or she has been provided with a copy of this Order and has executed an Agreement of Confidentiality in the form attached as Exhibit A. Persons identified in all other subsections of this paragraph are not required to execute an Agreement of Confidentiality but shall be advised of the restrictions of this Order and shall be admonished by counsel not to circumvent those restrictions.

3. **How to Designate.** Confidential information shall be protected by designating it as such by one of the following methods:

a. **In the case of produced documents**, the producing Party shall stamp "Confidential" on the first page of any such document. In the case of documents produced in electronic form, the producing Party shall stamp "Confidential" on the floppy disk or CD ROM containing Confidential information and/or stamp

“Confidential” on the container for the floppy disk or CD ROM containing Confidential information. Notwithstanding the prior sentences in this subsection, all documents shall be deemed Confidential information during any initial inspection of such documents regardless of whether the legend “Confidential” appears on them and shall remain so until copies are produced.

b. In the case of documents obtained from a non-party pursuant to subpoena in this action, that non-party or any Party desiring to protect Confidential information shall notify all other Parties of the documents it desires to be treated as Confidential within 10 business days of receipt of such documents by the Parties and shall identify the basis of its claim of confidentiality. The documents shall be deemed to be Confidential until further order of the Court regardless of any disagreement with such designation by the receiving Party. The Party so notifying also shall stamp the documents as indicated above and provide a copy of the stamped documents to the other Parties. The other Parties shall then destroy the documents originally produced and replace them with the copies designated as Confidential. All documents obtained from a non-party pursuant to subpoena in this action shall be deemed to be Confidential until the expiration of 10 business days following the receipt of such documents by the Parties.

c. In the case of responses to Interrogatories or Requests for Admission containing Confidential information, the Party responding shall stamp “Confidential” on the first page of the interrogatory answers.

d. In the case of deposition, trial, or hearing testimony, the Party shall inform the court reporter on the record at such hearing or deposition that it is

designating a certain portion of the record as Confidential and request that the court reporter place the legend "Confidential Pursuant to Court Order" on the first page of any transcript that is prepared. In the case of testimony pursuant to a deposition or a court hearing, a Party may also designate a portion of the record as Confidential information by notifying counsel for the other Party of such intention within 10 business days of receipt of the final transcript of the deposition or hearing. The Parties in possession of such transcripts at the time of notice shall designate all copies of the transcripts as indicated above. All transcripts obtained in this action shall be deemed Confidential until the expiration of 10 business days after the receipt of the final transcript. All notes, abstracts, or summaries of any testimony designated as Confidential shall be deemed Confidential without further action of the designating Party and shall be marked by the Party in possession accordingly. If requested by the Party designating information as Confidential, only persons who are permitted access to Confidential information under this Protective Order shall be permitted in the deposition room when such information is discussed or disclosed. In the event a Party believes it necessary to have assistance in a deposition by a person not permitted such access and the designating Party objects, the Parties shall consult to resolve the objection. If the Parties are unable to reach an accord, the Party seeking assistance by the person not permitted access may apply to the Court by motion to allow such attendance and assistance.

4. **Withdrawal of Designations.** A Party designating information as Confidential may at any time withdraw the designation or consent to the disclosure and or use of such information by advising the other Parties, in writing.

5. **Objections to Designations.** In the event that a Party objects to the designation of information as Confidential under this Order by a producing entity, the Parties shall confer in an effort to resolve the objection. If the Parties are unable to reach an accord, the objecting Party may apply to the Court by motion for a ruling that the information shall not be designated as Confidential. If such a motion is filed, the designating Party shall bear the burden of demonstrating the propriety of the designation, based on a showing of good cause that the material constitutes or contains proprietary or confidential information or trade secrets. If such a showing is not made to the satisfaction of the Court, the information shall no longer be treated as Confidential Information. The information shall remain Confidential (as designated) during the pendency of such motion and until further order of Court. A Party shall not be obligated to challenge the propriety of the designation of information as Confidential at the time it is made, and failure to do so shall not preclude a subsequent challenge thereto.

6. **Retroactive Application.** All documents that contain Confidential information so identified and obtained prior to the entry of this Order shall be subject to treatment as such pursuant to the terms of this Order.

7. **Inadvertent Production.** If a Party inadvertently produces information that they believe to be Confidential information, but which was not properly designated as such pursuant to this Order, the Party that inadvertently produced the information shall promptly notify the receiving Parties of the mistake and promptly reproduce the information with proper designation. Once notified, the receiving Parties shall treat such information as Confidential information

pursuant to this Order and destroy all previously produced copies once replacement copies are produced. Inadvertent disclosure shall not be deemed a waiver of a Party's claim that information is Confidential information under this Order. Disclosure of any information before a Party receives notice of inadvertent production of such information shall not be a violation of this Order.

8. **Subpoenas.** If a Party in possession of material designated as Confidential by another Party receives a subpoena or other request seeking production or disclosure of such material, that Party shall immediately give written notice to counsel for the designating Party, stating the identity of the person or entity seeking production or disclosure of such material, the nature and type of material designated as Confidential that is sought, and the date and time proposed for production or other disclosure of such material. Any Party objecting to the production or other disclosure shall have the obligation to take timely action in the appropriate court or courts.

9. **Filing Confidential Information.** A Party seeking to file Confidential materials with the Court shall first seek leave of the Court to do so by filing a motion for impoundment of the Confidential materials, in compliance with Local Rule 7.2.

10. **Trial Use.** This Order shall not restrict the disclosure of Confidential information by counsel for a Party during the course of a trial or other evidentiary hearing in this action. Counsel intending to disclose Confidential information during such trial or other evidentiary hearing shall notify opposing counsel of the intent to disclose Confidential information by designation in the final pretrial order or similar writing in the case of an evidentiary hearing, and opposing counsel may request an appropriate protective order from the Court in compliance with Local Rule 7.2. The disclosure of such Confidential information during such trial or other

evidentiary hearing in this action, whether or not objected to by opposing counsel, shall not be deemed a waiver of the restrictions of this Order with respect to such information.

11. **Reasonable Precautions Required.** The Parties shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure of any Confidential information which, when not in use, shall be stored so as to be inaccessible to persons not authorized to receive such information.

12. **Copy Services Permitted.** Notwithstanding anything to the contrary in this Order, a Party may use the services of a public photocopying, printing, binding, or computer input service with regard to Confidential information, provided such service is advised of the confidential nature of the information and asked to maintain its confidentiality.

13. **No Waiver of Other Protections.** The restrictions on the disclosure and use of Confidential information as set forth in this Order are in addition to any restrictions on the discovery, disclosure, or use of any documents or information that may otherwise be applicable, including, but not limited to, restrictions based on the attorney-client privilege, the work-product doctrine, and evidentiary objections. The failure of a Party to designate a document or paper as Confidential (or that Party's withdrawal of such designation) shall not in and of itself constitute a waiver of any applicable limitation on the discovery, disclosure, or use of any such document or paper.

14. **Information in the Public Domain.** No information in the public domain or which is already known to the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential information under this Order.

15. **Return/Destruction of Confidential Information.** Within 30 days after entry of final judgment from which no appeal is taken, receipt of a mandate from the Appellate Court affirming any such judgment or finally disposing of this or other litigation between the Parties relating to facts and circumstances set out in the Complaint, or settlement of this matter, all documents and papers designated as Confidential or containing Confidential information derived from such documents or papers either shall be returned to counsel for the designating Party or shall be destroyed by counsel for the Party in possession. An original copy of attorney-work product and pleadings containing Confidential information may be retained by the attorney, but shall remain subject to this Order. Upon written request of counsel for a Party, counsel for the other Parties shall send written notice of compliance with this Paragraph within 5 business days.

16. **Duration of Order.** This Order shall remain in force and effect until modified by further order of this Court. This Order shall continue in full force and effect after the final conclusion of this action, and this Court shall retain jurisdiction for the purpose of enforcing its terms.

ENTERED: December 10, 2010


Magistrate Judge Kenneth P. Neiman

EXHIBIT A

Agreement of Confidentiality

The undersigned hereby acknowledges that he/she has reviewed the Agreed Protective Order (the "Order") dated _____ and entered in the United States District Court for the District of Massachusetts in the action entitled *Patrick Dermesropian v. Dental Experts, LLC, et al*, Case No. 09-cv-30087, that he/she understands the terms thereof, and that he/she agrees to be bound by such terms. The undersigned hereby acknowledges that the United States District Court for the District of Massachusetts has subject matter jurisdiction over any matters concerning the Order including, but not limited to, disputes, enforcement, and violations of the Order. The undersigned submits to personal jurisdiction in the United States District Court for the District of Massachusetts with respect to any and all matters concerning the Order.

Signature

Date

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