

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER -
NAMPA, INC., TREASURE VALLEY
HOSPITAL LIMITED PARTNERSHIP, SAINT
ALPHONSUS HEALTH SYSTEM, INC., AND
SAINT ALPHONSUS REGIONAL MEDICAL
CENTER, INC.

Plaintiffs,

v.

ST. LUKE'S HEALTH SYSTEM, LTD.

Defendant.

Case No. 11:12-cv-00560-BLW

PROTECTIVE ORDER GOVERNING
THE PRODUCTION AND EXCHANGE
OF CONFIDENTIAL INFORMATION

Pursuant to this Court's Order (Docket 57) and Order to Clarify Protective Order Ruling (Docket 61),

IT IS HEREBY ORDERED that this Protective Order ("Order") shall be entered and limit the disclosure and use of certain information in the above-captioned action (the "Action") as hereinafter provided:

1. Documents, discovery responses and deposition testimony to be produced by the Parties or a Third Party pursuant to the Federal Rules of Civil Procedure ("Discovery Material") or any submissions by the Parties or a Third Party to the Court ("Submitted Material"), which contain information that the producing Party or Third Party in good faith regards as confidential or proprietary information, and all information derived from such Discovery Material or

PROTECTIVE ORDER GOVERNING THE PRODUCTION AND EXCHANGE OF
CONFIDENTIAL INFORMATION-1

Submitted Material, including but not limited to extracts, memoranda, notes and correspondence quoting from or summarizing such information, shall hereafter be referred to as “Protected Material.” This includes such information from a Third Party’s production which was originally received from a Party or derived from information received from a Party, which the Party in good faith regards as confidential or proprietary and marked as confidential or proprietary by that Party. The word “documents” is used in its broadest sense and means all written and computerized materials, videotapes, and all other tangible items and items in magnetic or electronic media. Discovery Material includes deposition testimony before and after it is transcribed into a transcript. A document, discovery response, or deposition testimony shall be considered Protected Material, and given confidential treatment as described below, but only to the extent that the producing Party or Third Party designates it as either “Confidential” or “For Attorneys’ Eyes Only.”

2. **“Confidential”** refers to Protected Material that a Party or Third Party in good faith regards as containing confidential or proprietary information that is sensitive, as well as any copies or summaries of such information or materials that otherwise reveal the contents of such information, and is not otherwise categorized as “Attorneys’ Eyes Only”. It includes: (1) information understood to be confidential pursuant to Rule 26(c) of the Federal Rules of Civil Procedure; and (2) any other confidential information not covered under Paragraph 3.

3. **“Attorneys’ Eyes Only”** refers to Protected Material that a Party or a Third Party in good faith regards as containing highly sensitive trade secrets, the disclosure of which would result in demonstrable harm to the Party or Third Party, as well as any copies or summaries of such Protected Material that reveal its content. It includes: (1) financial data, marketing and advertising data or plans, strategic or long-range plans, or internal cost or price, charges or rates

data; and (2) any other information the disclosure of which could cause competitive harm to the Party or the Third Party.

4. All or any portion of any Protected Material may be designated as Confidential or For Attorneys' Eyes Only, provided that such designation is made in good faith and provided further that any Party may apply to the Court to challenge any such designation. Once designated in good faith as Confidential or For Attorneys' Eyes Only, such material shall be treated as Confidential or For Attorneys' Eyes Only, as appropriate, under the terms of this Stipulated Protective Order until such designation is withdrawn by the producing Party or Third Party or by further order of this Court.

5. Documents may be designated as Confidential by placing a stamp on each page that reads "CONFIDENTIAL." Documents may be designated as For Attorneys' Eyes Only by placing a stamp on each page or just the first page that, in substance, reads "FOR ATTORNEYS' EYES ONLY." Unless otherwise designated, documents containing protected health information shall be at least be deemed "CONFIDENTIAL." Electronically stored information may be designated as Confidential by placing a mark that reads "Confidential" on the information or media containing the information. Electronically stored information may be designated as For Attorneys' Eyes Only by placing a mark that, in substance, reads "For Attorneys' Eyes Only" on the information or media containing the information. Such designation may be made by a Party or Third Party with regard to its own documents prior to production or submission to the Court, or by a Party with regard to documents containing information of the Party produced by a Third Party within 10 days of that Party's receipt of production by such Third Party, subject to the provisions of paragraph 16 of this Protective Order. In the latter case, the Party providing such designations with regard to a Third Party's

documents shall be treated as Producing Party under this Order with respect to such documents. All documents produced by a Third Party shall be treated as Attorneys' Eyes Only during such 10 day period.

6. Except upon the prior written consent of the Party or Third Party producing the document or evidence or designating such document or evidence as confidential ("Producing Party"), or upon further order of the Court, Protected Material that is marked CONFIDENTIAL may be shown, disseminated, discussed, or disclosed only to the following persons:

- a. The Parties' counsel of record in this Action and in-house counsel at each Party;
- b. Employees and contract attorneys of the Parties' counsel of record or the law firms of such counsel to the extent reasonably necessary for the conduct of this litigation;
- c. No more than a total of four employees of Plaintiffs (collectively) and four employees of Defendant (Defendant cannot designate Bill Savage as one of its four employees) – other than in-house counsel as provided for in subparagraph a; Bill Savage (only with respect to "Confidential" documents that originate from or refer to Saltzer's pre-transaction records); and Brian Julian of Anderson, Julian & Hull LLP, outside counsel for Saltzer Medical Group (only with respect to "Confidential" documents that originate from or refer to Saltzer's pre-transaction records). The four employees of Plaintiffs (collectively) and the four employees of Defendant (the same four identified for all documents and information), shall be identified in advance in writing;
- d. Outside experts and consultants (other than litigation service contractors (see subparagraph 6(g), below)) retained by the Parties or their counsel in good faith

for the preparation or hearing of this Action, and their employees or support staff to the extent reasonably necessary to provide such assistance, provided that such consultant or expert, or any of their employees or support staff, is not a present employee, officer or director, or non-litigation consultant of a Party and has no current plans to become so;

- e. Stenographic reporters and videographers engaged for depositions or proceedings necessary to this Action;
- f. Witnesses at, or in preparation for, their deposition or testimony in this Action, and their counsel, but only to the extent that (a) counsel reasonably believes that the witness wrote or previously had lawful access to the document; (b) counsel reasonably believes that the witness is otherwise knowledgeable of the document's contents or is the subject (or a subject) of the document; (c) the witness is, or at the time the document was prepared was, an employee of the Producing Party, or (d) the Producing Party consents to the disclosure;
- g. Employees of outside copy services used to make copies of such information, and of litigation service contractors (such as electronic discovery or jury consultants), retained by the Non-Producing Party's counsel of record or such counsel's law firm in connection with this Action;
- h. The Court and its staff; and
- i. The Third Party producing the Protected Material.

7. Except upon the prior written consent of the Producing Party, or upon further order of the Court, Protected Material that is marked FOR ATTORNEYS' EYES ONLY may be shown, disseminated, discussed, or disclosed only to the following persons:

- a. The Parties' counsel of record in this Action;
- b. Employees and contract attorneys of the Parties' counsel of record or the law firms of such counsel to the extent reasonably necessary for the conduct of this litigation;
- c. Outside experts and consultants (other than litigation service contractors (see subparagraph 7(f), below)) retained by the Parties or their counsel in good faith for the preparation or hearing of this Action, and their employees or support staff to the extent reasonably necessary to provide such assistance, provided that such consultant or expert, or any of their employees or support staff, is not a present employee, officer, or director of a Party, and any such outside expert or consultant so retained by the Parties is precluded from employment by the Parties for a period of one year from the end of the retention;
- d. Witnesses at, or in preparation for, their deposition or testimony in this Action, and their counsel, but only to the extent that (a) counsel reasonably believes that the witness wrote or previously had lawful access to the document; (b) counsel reasonably believes that the witness is otherwise knowledgeable of the document's contents or is the subject (or a subject) of the document; (c) the witness is, or at the time the document was prepared was, an employee of the Producing Party, or (d) the Producing Party consents to the disclosure;
- e. Stenographic reporters and videographers engaged for depositions or proceedings necessary to this Action;
- f. Employees of outside copy services used to make copies of such information, and of litigation service contractors (such as electronic discovery or jury consultants),

retained by the Non-Producing Party's counsel of record or the law firms of such counsel in connection with this Action;

- g. The Court and its staff; and
- h. The Third Party producing the Protected Material.

Notwithstanding any provision to the contrary in paragraphs 6 or 7, this Order shall not prevent or restrict counsel from providing advice to their clients, and in the course of providing such advice, relying generally on examination and general description of documents designated as "Confidential" or "For Attorneys Eyes Only". Such advice, however, cannot include the disclosure of specific quantitative information or competitive plans.

8. Before receiving access to any of the Protected Material designated Confidential or Attorneys' Eyes Only or the information contained therein, each person described in subparagraphs 6(c), 6(d), 6(f), 6(g) (with respect to litigation service contractors); 7(c), 7(d) or 7(f) (with respect to litigation service contractors) above shall be advised of the terms of this Protective Order, shall be given a copy of this Protective Order, and shall agree in writing to be bound by its terms and to be subject to the jurisdiction of the Court, by signing a declaration in the form attached as Exhibit A, or, if during a deposition, then by oral declaration on the record in substantially the same language as Exhibit A. For Paragraphs 6(g) and 7(f), this Paragraph 8 refers only to the supervisor of the outside copy service or litigation service contractor.

9. Prior to designating any material as "Confidential" or "For Attorneys' Eyes Only," the Producing Party will make a bona fide determination that the material is, in fact, subject to this Protective Order. If the Party to which the material is being produced ("Non-producing Party") disagrees with the designation of any document, it will so notify the Producing Party in writing and, if the Parties and/or Third Party cannot resolve the issue within ten (10)

business days of receiving such notice, the Non-producing Party may apply to the Court for a ruling that the document is not so protected. The Producing Party has the burden of proving that a document contains designated protected information. The Non-producing Party will treat any document marked as “Confidential” or “For Attorneys’ Eyes Only” until the Court enters a contrary ruling on the matter. The Court may order that the costs and attorneys fees of the objecting Party in any such proceeding will be borne by the producing Party if the Court finds that the material in question was improperly marked as “Confidential” or “For Attorneys’ Eyes Only”. Similarly, the Court may order that the costs and attorneys fees of the producing Party in any such proceeding will be borne by the objecting Party if the Court finds that the material in question was properly marked as “Confidential” or “For Attorneys’ Eyes Only”.

10. Within sixty (60) days after final termination of this Action, including any appeals, the Non-producing Party shall, through its counsel, provide written confirmation to the Producing Party’s counsel that all Protected Material has been destroyed or returned, provided that counsel of record for the Parties may keep a copy of all pleadings, depositions, written discovery responses, and correspondence in this litigation and any attorney-client privileged communications and attorney work-product, and further provided that all retained Protected Material shall be treated in accordance with the terms of this Stipulated Protective Order. Each expert and consultant who received copies of such documents shall certify that he or she has returned to counsel for the Parties, or has destroyed, all notes, memoranda, or other documents created by that expert or consultant from or containing information contained in the Protected Material.

11. To the extent that Protected Material or information contained therein are used in the taking of depositions, at any hearing or in any filing with the Court, the confidential

information may be filed under seal and shall then remain subject to the provisions of this Stipulated Protective Order. Only the confidential information, not the entire motion or filing, may be filed under seal unless the Parties have requested and received advance permission from the Court to place the entire motion or filing under seal. For clarification and by way of example, if a brief or motion refers to Protected Information, and some or all of the exhibits are documents designated as Protected Material, then the brief or motion and each exhibit designated as Protected Material shall be submitted to the clerk for filing in a sealed envelope or container clearly marked “Confidential” and with a statement substantially in the following form:

This envelope contains documents which are filed in this case by [name of party] and which are confidential pursuant to the Protective Order entered in this case. This envelope is to remain sealed and its contents disclosed only to the Court and those persons authorized to view its contents under the terms of the Protective Order.

A copy of the information filed under seal shall be submitted to the Court’s chambers in a sealed envelope or container clearly marked “COPY – ORIGINAL FILED UNDER SEAL.” Such documents are to be maintained under seal by the clerk or court reporter. The filing party must also provide to the Court as a courtesy a complete version of the filing, including the Protected Material, along with a cover letter identifying any portion of the filing that has been made under seal. Parties are to abide by the requirements provided by the Electronic Filing Policies and Procedures Manual, available at the District of Idaho’s website, regarding the electronic filing of sealed documents. Within seven (7) business days of filing a brief or motion under seal, the filing party shall file on the public docket a version of the brief or motion with only that information constituting or referring to Protected Material redacted.

12. With respect to any deposition or hearing transcript, a Party or Third Party, on the record or within ten (10) days after receipt of the transcript, may designate deposition exhibits,

transcripts or portions of the transcript and/or exhibits as “Confidential” and/or “For Attorneys’ Eyes Only” under this Protective Order. During the first ten (10) days following receipt of a transcript, the entire transcript shall be treated as “Attorneys’ Eyes Only.

13. Court reporters, stenographers, and videographers who transcribe or record testimony in this Action containing information identified by a Party or Third Party as Protected Material shall exercise reasonable care in maintaining the confidentiality of all transcriptions, recordings, notes, and other documents containing the Protected Material, and shall not disclose those materials except to counsel for the Parties authorized under this Stipulated Protective Order to receive the Protected Material and to the Court.

14. Responses to interrogatories and responses to requests for production of documents, information or things, may be designated as Confidential or For Attorneys’ Eyes Only by placing, in substance, the mark “Confidential” or “FOR ATTORNEYS’ EYES ONLY,” as appropriate, on the first page of such document and on any pages that contain Confidential or For Attorneys’ Eyes Only information.

15. In the event that any Party or Third Party inadvertently fails to designate any Protected Material as Confidential or For Attorneys’ Eyes Only, that material shall still be treated as such, provided that any Producing Party which claims that its confidential information is in that Protected Material provides written notice to each Non-producing Party, as soon as practicable, designating the material as Confidential or For Attorneys’ Eyes Only. Upon receipt of such written notice, each Non-producing Party shall treat the designated material as Confidential or For Attorneys’ Eyes Only and shall stamp or mark it accordingly, or if the Producing Party provides correctly designated copies of the material, destroy the misdesignated material or return it to the Producing Party.

16. If any Confidential or For Attorneys' Eyes Only document is disclosed to any person other than as permitted by Paragraphs 6, and 7 of this Protective Order, the disclosing Party shall, upon discovery of the disclosure, immediately inform the Producing Party of all facts pertinent to the disclosure, including the name, address, and employer of the person to whom the disclosure was made. The disclosing Party shall take all reasonable steps to prevent any further disclosure of the Confidential or For Attorneys' Eyes Only information. The Party whose documents or other materials are wrongfully disclosed may apply to the Court for such relief as such the Party deems appropriate.

17. If Protected Material or other information is inadvertently produced that is subject to a claim of privilege or of protection as attorney work-product and the Producing Party notifies the Non-producing Party of the claim and the basis for it, then: (a) such disclosure shall be without prejudice to any claim of privilege or protection; (b) such production shall not constitute waiver of any claim of privilege or protection; and (c) the Non-producing Party shall promptly return or destroy the material in question and any copies. By complying with section (c), the Non-producing Party is not deemed to agree with the claim of privilege or waive its right to challenge the claim at a later date. If the Non-producing Party in good faith intends promptly (*i.e.*, within 14 days) to dispute the claim of privilege or protection, the Non-producing Party may maintain one copy of the disputed material, provided it promptly presents the information to the Court under seal for a determination of the claim. If the Non-producing Party disclosed the information before being notified, it must take reasonable steps to retrieve it. The Producing Party must preserve the information until the claim is resolved. It is the parties' intention to take advantage of the full scope of the protections provided by Federal Rule of Evidence 502.

18. The rules governing use of Confidential and Attorneys' Eyes Only Protected Material at trial shall be determined at a future date. These rules will include a process by which Third Parties are given advance notice and a reasonable opportunity to object to the potential public disclosure at trial of any Protected Material they produced.

19. Counsel for the Parties will maintain a list of all persons employed by the Party represented by such counsel to whom any Protected Document is provided. The list shall be available for inspection by the Court and, upon good cause shown, by the Producing Party.

20. All parties reserve the right to apply to the Court for an order modifying or amending the terms of this Protective Order, either upon consent of the other Parties or upon a showing of good cause and other appropriate showing under the particular circumstances. Prior to applying to the Court, the Party seeking a modification or amendment shall work with the other Parties to submit an agreed modified Order to the Court.

21. This Protective Order shall be binding upon the Parties, upon their attorneys, and upon the Parties' and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

22. Protected Material shall only be used for purposes of this Action and shall not be used for any other purpose. However, notwithstanding any other provision of this Protective Order, either Party shall be permitted to provide any documents or other material produced or generated in this litigation – whether or not marked as “Confidential” or “For Attorneys Eyes Only” -- to the Federal Trade Commission and the Office of the Attorney General of Idaho, subject to the requirements of the FTC Act and Idaho law regarding the maintenance of

confidentiality of such documents. Provision of such materials shall not require prior notice to the other Party or any Third Party.

23. Nothing in this Protective Order shall be construed to limit the Parties' use or disclosure of their own materials.

24. Except as provided in paragraph 22, if any person who has obtained Protected Material under the terms of this Protective Order is served with a subpoena or other discovery request commanding the production of any Protected Material, such person shall promptly notify counsel for the Producing Party and shall not produce any Protected Material in response to the subpoena or discovery request before such notification and for at least ten (10) business days thereafter. Within ten (10) business days after such notification, counsel for the Producing Party may ask the relevant court in which the subpoena or discovery request was issued to prevent production of the Protected Material. If such request to that relevant court is made within that time, then the Protected Material shall not be produced until that court rules. If no such request to that court is made within that time, then the Protected Material may be produced.



DATED: January 16, 2013.

A handwritten signature in black ink, appearing to read "Ronald E. Bush".

Honorable Ronald E. Bush
U. S. Magistrate Judge

EXHIBIT A

I have reviewed the Court's Stipulation and Protective Order Governing the Production and Exchange of Confidential Information ("Order") entered in *Saint Alphonsus – Nampa, Inc., Treasure Valley Hospital Limited Partnership, et al. v. St. Luke's Health System*, United States District Court, District of Idaho, Civil Action No. 11:12-cv-00560-CWD. I understand that pursuant to the Court's Order, information disclosed in this matter through discovery shall be held confidential pursuant to the terms of the Court's Order. I hereby agree to be bound by the terms of the Court's Order, including all provisions relating to the treatment of confidential information.

Dated at _____, this _____ day of _____, 20__.

Signature: _____

Printed Name: _____

Address: _____
