

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL CENTER : CASE NO. 3:22cv00050 (SVN)
v. :
HARTFORD HEALTHCARE CORPORATION, ET AL. : APRIL 14, 2023

**MOTION TO QUASH SUBPOENA BY NON-PARTY
CONNECTICUT HOSPITAL ASSOCIATION**

Non-party Connecticut Hospital Association (“CHA”) respectfully moves the Court for an Order quashing the Subpoena issued to it by Plaintiff Saint Francis Hospital and Medical Center. A copy of the Subpoena is attached hereto as Exhibit A.

As set forth in CHA’s accompanying memorandum of law, CHA is precluded by the Privacy Rule of the Health Insurance Portability and Accountability Act (“HIPAA”), and other federal and Connecticut state laws, from producing the privileged and protected patient data requested by the Subpoena, and the Subpoena must be quashed on that basis alone. In addition, Rule 45 of the Federal Rules of Civil Procedure requires that the Subpoena be quashed because it requests disclosure of HIPAA privileged and protected information, and because the data requested – potentially involving over 63 million patient encounters and 4.5 million patients – imposes an “undue burden” on CHA.

Respectfully submitted,

CONNECTICUT HOSPITAL ASSOCIATION

By: /s/ Joseph W. Martini
Joseph W. Martini
Federal Bar No. ct07225
SPEARS MANNING & MARTINI, LLC
2425 Post Road, Suite 203

Southport, CT 06890
Phone: 203-292-9766
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CERTIFICATION

I hereby certify that on April 14, 2023, a copy of the foregoing Motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Joseph W. Martini
Joseph W. Martini
Federal Bar No. ct07225

EXHIBIT A

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Connecticut



Saint Francis Hospital and Medical Center, Inc.

Plaintiff

v.

Hartford Healthcare Corporation, et al.

Defendant

Civil Action No. 22-cv-00050

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Connecticut Hospital Association - ATTN: Jennifer Jackson
110 Barnes Road
Wallingford, CT 06492-0090

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibits

Place: William S. Fish, Jr. Hinckley, Allen & Snyder LLP 20 Church St. Hartford, CT 06103	Date and Time: 04/17/2023 9:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/29/2023

CLERK OF COURT

OR

A True Copy
Attest:

Process Server

/s/ Nicholas Burandt

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Saint Francis Hospital and Medical Center, Inc., who issues or requests this subpoena, are: Nicholas Burandt, Honigman LLP, 155 N. Wacker Dr., Suite 3100, Chicago, IL 60606, nburandt@honigman.com, 312.429.6017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 22-cv-00050

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A TO PLAINTIFF'S SUBPOENA AND REQUEST FOR PRODUCTION OF DOCUMENTS

Under Federal Rule of Civil Procedure 45, Plaintiff Saint Francis Hospital and Medical Center, Inc. by its attorneys, Honigman LLP, serves this subpoena and request for production of documents on Connecticut Hospital Association.

The documents and tangible things requested herein should be sent to the law offices of Hinckley, Allen & Snyder LLP, 20 Church Street, Hartford, CT 06103-1221 (or another mutually agreeable alternative location), by April 14, 2023.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following definitions and instructions shall apply:

1. In addition to the specific instructions below, these document requests incorporate by reference the instructions set forth in Rule 45 of the Federal Rules of Civil Procedure.
2. The Documents sought herein must be produced for inspection and copying by April 14, 2023.
3. Documents sought herein shall include all documents in your possession, custody or control and/or that can be obtained by you from your employees, administrators, officers, commissioners, officials, agents, representatives, sureties and/or indemnitor. This request shall be deemed continuing and supplemental documents shall be required to be produced immediately if you, directly or indirectly, obtain further or different documents or information from the time documents are first produced to the time of the trial of this matter.
4. Documents attached to each other must not be separated.
5. All responsive documents shall be produced in their entirety. Documents which are responsive shall not be redacted, except as necessary to preserve a privilege.

6. Unless otherwise specified, and regardless of the tense used in any request, you shall provide all responsive information and submit all responsive documents that are dated, generated or received from 2015 through the date of these requests. The foregoing shall be referred to as the “relevant period.”

7. If any documents are withheld from production based on a claim of privilege, provide for each such document a statement of the claim of privilege and all facts relied on in support thereof, including the document’s author(s), addressee(s), date, title, subject matter, all recipients of the original and of any copies. For each author, addressee, and recipient, state the person’s full name, title, and employer or firm, and denote all attorneys with an asterisk. For each document withheld under a claim that it constitutes or contains privileged attorney work product, also state whether the company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify that litigation. Submit all non-privileged portions of any responsive document claimed to be privileged.

8. Documents should be produced in the form specified in Exhibit 1 hereto.

9. “You” or “Your” refers to Connecticut Hospital Association and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity, including all commercial health plan products offered by You, including without limitation group products, individual products, exchange products, Medicare Advantage products, and Medicaid products provided that any data supplied shall distinguish

between commercially insured products, Medicare products and Medicaid products, each category separately.

10. The term “facilities” refers to hospitals, buildings at which inpatient or outpatient services are provided, and any other locations at which medical services are provided.

11. References to “documents sufficient to show” seek documents (a) which (i) already exist in hard copy form, or (ii) can be or have been generated in a report from electronic data, and (b) which provide part or all of the information requested. Requests for “documents sufficient to show” or “documents sufficient to identify” do not require manual compilation of hard copy documents.

12. The terms “relate to” or “relating to” mean constitute, consist of, discuss, refer to, reflect on, arise out of, or be in any way or manner, directly or indirectly, in whole or in part, legally, factually, or logically connected with the matter discussed.

13. The singular form of any word shall be deemed to include the plural, and vice versa.

14. The term “including” shall mean “including but not limited to.”

15. The terms “and” and “or” shall be construed both conjunctively and disjunctively.

16. The terms “every,” “each,” “any,” or “all” mean each and every.

17. “Reports” include both paper and electronic reports, including without limitation electronic reports which can be generated by your computer systems or applications.

18. If you are unable to respond to a request, you should so state and should:
- i. State why you are unable to respond to a request;
 - ii. Identify the source, if any, from which responsive information can be obtained; and
 - iii. Produce as much responsive information as you are able.

19. For all databases or other data compilations submitted in response to this Subpoena and Request for Production of Documents, provide all instructions and documentation, including data dictionaries, reasonably necessary to use or interpret such databases or data compilations.

20. All requests seeking documents “addressing” a topic shall include all documents discussing or referencing, in whole or in part, that topic.

21. This Request incorporates by reference all definitions and procedures in the District’s Standing Order and in the Stipulation and Proposed Order Regarding Protocol for Discovery in this case, which is attached hereto as Exhibit 1.

DOCUMENT REQUESTS

1. Documents sufficient to show, for all inpatient, newborn, observation, emergency department, same day surgery, and other outpatient visits and encounters at Connecticut hospitals and hospital-based facilities, on an annual basis, during the period from January 1, 2015 to the present, data from each of the following fields or corresponding fields if a given field is not tracked:

- a. Discharge ID;
- b. Patient ID linking discharges of a patient over time and across facilities;
- c. Admission date;
- d. Discharge date;
- e. ID, name, and address of the physical location where the patient received treatment;
- f. ID, name, and address of the location through which the visit is reported;
- g. ID, name, and address of the location through which the visit is billed;
- h. Attending physician (name, NPI, ID, specialty);

- i. Operating physician (name, NPI, ID, specialty);
- j. Referring physician (name, NPI, ID, specialty);
- k. Other physician (name, NPI, ID, specialty);
- l. Primary care physician (name, NPI, ID, specialty);
- m. Primary payer type (Medicare Fee-for-service, Medicare Advantage, commercial, Medicaid, self-pay, other, etc.);
- n. Primary payer name;
- o. Secondary payer type (Medicare Fee-for-service, Medicare Advantage, commercial, Medicaid, self-pay, other, etc.);
- p. Secondary payer name;
- q. Patient's age;
- r. Patient's gender;
- s. Patient's zip code;
- t. Patient's town;
- u. Admission type (emergency, urgent, elective, newborn, trauma);
- v. Admission source;
- w. Discharge disposition or status (e.g., discharged home, transferred to another healthcare facility);
- x. Length of stay;
- y. Principal and all secondary diagnoses (ICD-9/ICD-10 diagnosis codes);
- z. Principal and all secondary inpatient procedures (ICD-9/ICD-10 procedure codes);
- aa. DRG or MS-DRG code;
- bb. MDC code;

- cc. CPT/HCPCS codes and modifiers;
- dd. Revenue codes;
- ee. Total charge amount;
- ff. Total ancillary charges amount;
- gg. Total accommodation charges amount.

2. Documents sufficient to show the meaning of each field name and the meaning of any coded values that may populate a field produced in response to Request No. 1 above, for example, a data dictionary.

3. Documents sufficient to show whether the facility reported in the discharge record of the patient is the location where the patient actually received treatment, or whether there are cases where a facility reports visits through another facility.

4. If certain facilities report visits through other facilities, please produce Documents sufficient to show which facilities report visits through another facility and provide the ID, name, and address of the facility through which they report data to CHA.

EXHIBIT 1

Roberts, Nicole

From: CMECF@ctd.uscourts.gov
Sent: Wednesday, June 8, 2022 1:19 PM
To: CMECF@ctd.uscourts.gov
Subject: Activity in Case 3:22-cv-00050-AVC Saint Francis Hospital and Medical Center v. Hartford HealthCare Corporation et al Order

[EXTERNAL EMAIL]

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Connecticut

Notice of Electronic Filing

The following transaction was entered on 6/8/2022 at 1:18 PM EDT and filed on 6/8/2022

Case Name: Saint Francis Hospital and Medical Center v. Hartford HealthCare Corporation et al

Case Number: 3:22-cv-00050-AVC

Filer:

Document Number: 82(No document attached)

Docket Text:

ORDER noting and so ordering the parties' stipulation and proposed order regarding the protocol for discovery. Signed by Judge Alfred V. Covello on 06/08/22. (Codeanne, K.)

3:22-cv-00050-AVC Notice has been electronically mailed to:

William S. Fish, Jr wfish@hinckleyallen.com, jmccarthy@hinckleyallen.com

Jeffrey J. Mirman jmirman@haslaw.com, jrosinski@haslaw.com, kalbino@haslaw.com

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3:22-cv-00050-AVC Notice has been delivered by other means to:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL
CENTER, INC.,

Plaintiff,

v.

HARTFORD HEALTHCARE CORPORATION,
HARTFORD HOSPITAL, HARTFORD
HEALTHCARE MEDICAL GROUP, INC.,
INTEGRATED CARE PARTNERS, LLC,

Defendants.

Case No. 22-cv-00050

Judge Alfred Covello

**STIPULATION AND [PROPOSED] ORDER REGARDING PROTOCOL FOR
DISCOVERY**

The parties (“Parties”) in the above-captioned action (“Litigation”) have agreed to the terms of this Stipulation and [Proposed] Order Regarding Protocol for Discovery (“Discovery Protocol”) to govern the form of productions made by the Parties in this Litigation. Accordingly, it is ORDERED:

1. SCOPE

A. Absent special circumstances, the provisions set forth in this ESI Protocol shall govern the production of all paper documents and electronically stored information (collectively “ESI”) by the Parties during discovery.

B. The Parties shall meet and confer in good faith in an effort to agree upon: (a) sources from which and custodians from whom ESI will be collected for review and production; (b) search methods and terms or other filtering or categorization to be applied; and (c) timeframes for collection and review of ESI.

C. Except as noted herein, the Parties agree that the following instructions (“Instructions”) apply to the production of all ESI, including “paper” documents and files stored in electronic format (including, but not limited to, email, messages (e.g. SMS text messages, iMessage, or messaging applications such as WhatsApp, Signal, or Telegraph), note files (both paper notes and electronic notes created using electronic note applications such as Microsoft OneNote), Word documents, PowerPoint documents, Excel documents, Access databases, documents and messages created or saved in collaboration tools such as Microsoft Teams, Microsoft SharePoint, Microsoft Yammer, and Slack, or any other cloud-based software platform, including Google Workspace applications. Nothing in this Discovery Protocol is intended to be an exhaustive list of discovery obligations or rights of a Party producing discoverable information (“Producing Party”) or a Party requesting discoverable information (“Requesting Party”), or any other Party or nonparty.

D. Notwithstanding anything in this Discovery Protocol, the Parties may mutually agree to deviate from the provisions set forth herein as to specific documents or categories of documents. In the event that any Party identifies a circumstance where application of this Discovery Protocol is not technologically possible or practicable, the Producing Party will disclose to the Requesting Party the reason(s) for, and circumstances surrounding, the need to vary from this Discovery Protocol, and the Parties will meet and confer in an effort to reach agreement on an appropriate deviation from this Discovery Protocol.

E. The Parties and their attorneys do not intend by agreeing to this Discovery Protocol to waive their rights to any protection or privilege, including the attorney-client privilege and work product doctrine, or their rights to object to any discovery requests. This

Discovery Protocol does not address or resolve any objections to the scope of the Parties' respective discovery requests.

F. Nothing in this document establishes any agreement as to either the temporal or subject matter scope of discovery in the Litigation. Nothing in this document creates an obligation by any party to produce ESI on back-up tapes or other long-term storage media that were created strictly for use as a data back-up or disaster recovery medium.

G. The Parties shall not be obligated under this document to produce any ESI that is no longer within their possession, custody or control (*i.e.*, lost or deleted) as a result of the routine, good-faith operation of an electronic information system, unless the Party requesting such ESI establishes that there is good cause to believe that the Party from whom such ESI is being requested intentionally failed to preserve, deleted or destroyed the ESI while under an obligation to retain it.

H. Notwithstanding anything to the contrary herein, the following document types are not discoverable in the Litigation except upon a showing of good cause, to include that the information sought is likely material, that it is unavailable from other sources, and that its production will not impose undue burden or expense on the producing party:

- (i) Back-up tapes or other long-term storage media that were created strictly for use as a data back-up or disaster recovery medium.
- (ii) Deleted, erased, or overwritten computer files, whether fragmented or whole, which were deleted in the regular course of business;
- (iii) Data stored in Random Access Memory ("RAM"), cache memory, or in temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;

- (iv) Data stored on photocopiers, scanners, and fax machines; and
- (v) Data stored as server, system, or network logs.

I. Nothing in this Protocol prevents any Party from asserting, in accordance with the Federal Rules of Civil Procedure, that other categories of ESI are not reasonably accessible within the meaning of Rule 26(b)(2)(B).

J. The Parties shall meet and confer to resolve any disputes that arise under this protocol. In the event the Parties cannot reach agreement on a disputed matter, the Parties shall submit the matter to the court.

2. PRODUCTION FORMAT

A. ESI Production Format: ESI shall be produced primarily as single page, uniquely and sequentially numbered CCITT Group IV TIFF image files not less than 300 dpi. The images shall be accompanied by searchable full text files containing the extracted text on a document basis, or if extracted text is unavailable, e.g., image-only PDF files, then searchable text generated using Optical Character Recognition (“OCR”) will be provided. The text files shall be named to match the endorsed number assigned to the image of the first page of the document. The images and text files shall also be accompanied by image cross-reference load files in the format requested by each party (such as Opticon) providing the beginning and ending endorsed number of each document and the number of pages it comprises. The producing Party shall also provide a litigation support database load file (“Data Load File”) corresponding to the TIFF image files and the full text files, that shall contain the requested metadata, as reasonably available, associated with each field specified in Schedule A. For the avoidance of any doubt, there is no obligation on a Party to create metadata where none exists or is not reasonably available. Data Load Files will be provided in both Concordance (DAT) and Summation (DII and Summary.TXT) file formats.

B. **Paper Production Format:** Paper discovery shall be converted to electronic form and produced as single page, uniquely and sequentially numbered CCITT Group IV TIFF image files not less than 300 dpi resolution to enable the generation of searchable text using OCR. The images shall be accompanied by text files containing the OCR-generated searchable full text. The text files shall be named to match the endorsed number assigned to the image of the first page of the document. The images shall also be accompanied by an image cross-reference load file (such as Opticon) providing the beginning and ending endorsed number of each document and the number of pages it comprises. The producing Party shall also provide a Data Load File corresponding to the CCITT Group IV TIFF image files, that shall contain a coded "Custodian" field, as defined in the Production Fields set forth in Schedule A.

C. **Appearance, Content, and Redaction:** Subject to any necessary redaction, each document's TIFF image file shall contain the same information and same physical representation as the document did in its original format, whether paper or electronic, consistent with the processing specifications set forth in **Section 3. Processing Specifications**. If redaction takes place, it will be logged on a privilege log. Redaction of ESI will be performed on a TIFF imaged version of the document only, and native format files and extracted text will **not** be provided. Unredacted text in a redacted document must be made searchable using OCR. Any redactions must be clearly visible on the face of the produced document (*e.g.*, the Parties should not use white boxes to make redactions on documents with a white background) and OCR searchable (*e.g.*, labeled "Redacted").

D. **Document Unitization:** If a paper document is more than one page, the document should be unitized using physical unitization. For electronic documents, all unitization should be

defined within the data load file; this includes the designation of parent/attachments both for e-mail and attachments and for compressed files (such as ZIP or RAR files) and their contents.

E. **Color:** If an original document contains color that is necessary to understand the meaning or content of the document, the document shall be produced as single-page, color JPG images. Original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to landscape).

F. **Document Numbering for TIFF Images:** Each page of a document produced in TIFF file format shall have a legible, unique numeric identifier (“Document Number” or “Bates Number”) not less than eight (8) digits (with zero-padding) electronically “burned” onto the image at a place on the document that does not obscure, conceal or interfere with any information originally appearing on the document. The Document Number for each document shall be created so as to identify the producing Party and the Document Number (*e.g.*, “ABC-00000000”). Each Party shall have a unique identifying prefix.

G. **Production of ESI in Native Format:** Except as listed below, ESI produced in TIFF format is not required to be produced in native format unless agreed by the Parties or for good cause shown. Privileged documents that have been redacted in accordance with the provisions herein are not required to be produced in native format. A document produced in native format must not be intentionally manipulated to change the appearance or substance of the document prior to its collection or production.

- (i) Spreadsheets. Spreadsheets, CSV, and .txt files shall be produced solely as native files with a placeholder TIFF image showing the document Bates Number and stating “Produced in Native Format.” The database load files will include a link to the NativeFile field, along with extracted text.

- (ii) PowerPoint. PowerPoint documents shall be produced in both native format, and in TIFF format. The database load files will include a link to the NativeFile field, along with extracted text.
- (iii) Word Documents containing Track changes and/or Comments. Word documents containing Track changes and/or Comments shall be produced as TIFF images with Track Changes and Comments turned off, and in native format.
- (iv) Structured Data. To the extent a response to discovery requires production of discoverable electronic information contained in a database (SAP, SQL, MS Access or other), the producing party may comply by querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic file (for example, Excel or CSV format). The first line of the file will, to the extent possible, show the column headers for each field of data included. The Parties shall meet and confer to finalize the appropriate data extraction and production format for specific information contained in a database.
- (v) Media Files. The producing Party shall produce video, animation or audio files in their Native format with a placeholder TIFF image showing the document Bates Number and stating "Produced in Native Format" and a link in the NativeFile field.

H. **De-duplication:** The Parties shall use commercially acceptable methods (e.g., MD5 or SHA-1 hash values) to identify duplicate ESI and globally de-duplicate ESI. Family groups (e.g., an email and its attachments) shall be de-duplicated only against other family

groups as entities, and no document that is not part of a family group shall be de-duplicated against a member of a family group. The Parties will not de-duplicate loose electronic documents or Hard Copy Information against email attachments. The Parties will not treat a document containing handwritten notes, highlighting, or any other markings as a duplicate of a non-marked or annotated version of the same document. A Party may de-duplicate ESI across its custodians or sources, but if that option is exercised, the Party shall identify each custodian who had a copy of the produced document in the ALL CUSTODIANS field in the Metadata load file. A Party may only de-duplicate “exact duplicate” documents and may not de-duplicate “near duplicate” documents, both of the quoted terms in this sentence being given their ordinary meaning in the e-discovery field. Common system files defined by the NIST library (<http://www.nsr.nist.gov/>) need not be produced.

I. **Third-Party Software**: To the extent that documents produced pursuant to this document cannot be rendered or viewed without the use of proprietary third-party software, the Parties shall meet and confer to minimize any expense or burden associated with the production of such documents in an acceptable format, including issues as may arise with respect to obtaining access to any such software and operating manuals which are the property of a third party.

3. PROCESSING SPECIFICATIONS

The producing Party shall collect and process documents using sound methods that avoid spoliation of ESI. The producing Party shall use the following specifications when converting ESI from its Native format into TIFF image files prior to its production:

- A. All headers and footers shall be displayed.
- B. OLE embedded email signatures and company logo pictures or images (.gif files) in e-mails shall **not** be extracted. However, other OLE embedded objects (e.g., an Excel

spreadsheet embedded within an MS Word document), will be extracted and produced as an attachment to the source document.

C. For archive files (zip, jar, rar, gzip, etc.), extract from the archive and maintain family relationships; do **not** include the source/container file itself in the production.

D. For MS Excel or other spreadsheet files, hidden columns and rows shall be made visible, to the extent reasonably feasible upon collection and processing. Additionally, where present, hidden sheets, headers, and footers should be made visible.

E. PowerPoint documents should be processed with hidden slides and speaker's notes, and comments unhidden, and should display both the slide, speaker's notes, and comments on the TIFF image. Auto-populated fields, with the exception of auto-populating "page-number" fields, shall be replaced with text indicating the field name. For example, auto-populating "date" fields shall be replaced with the text "DATE" (or other similar text) and auto-populating "filepath" fields shall be replaced with the text "PATH" (or other similar text).

4. PRIVILEGE LOG

A. Any document or e-mail or redacted portion of document/e-mail that is identified as privileged for any reason and logged on a privilege log is subject to the following:

- (i) Within 30 days after the substantial completion of document production in response to each document request (and in no event later than 90 days after each document request), the producing party shall serve on the requesting party a privilege log containing any documents withheld on the basis of any claim of privilege or other legal protection ("Privileged Material"). The parties shall promptly provide a privilege log for any subsequently withheld documents.

- (ii) The privilege log shall include sufficient information to allow the receiving party to reasonably assess the claim of privilege, including but not limited to the following information: (i) the date of the document (i.e., the date of the last email in the email chain); (ii) the author(s)/sender(s); (iii) recipients (including recipients copied and/or blind copied); (iv) a description of the contents of the document that, without revealing information itself privileged or protected, is sufficient to understand the basis of the claim of privilege; and (v) the type or nature of the privilege asserted (e.g., attorney-client privilege, work-product doctrine).
- (iii) The parties are only required to provide a single privilege log entry for multiple email messages in the same email thread to the extent such messages are included within one individual email thread. The email that will be logged will be the most inclusive thread with any associated attachments.
- (iv) Documents that contain both privileged and non-privileged/work product protected information will be produced with the privileged/protected information redacted and the non-privileged/protected information visible. Documents or portions thereof that contain redactions for information withheld on privilege/work product grounds will be identified in a privilege log in accordance with Rule 26(b)(5)—with the exception that redacted documents need not be logged provided the basis for the redaction is made plain on the face of the redacted document (e.g., the

email to/from is between counsel and is visible in the produced version of the document).

5. COSTS.

The costs of production pursuant to this Order shall be borne by the Producing Party. However, in agreeing to this Order, no Party waives or relinquishes any right or interest it may have under the Federal Rules of Civil Procedure to seek cost shifting or apportionment for the costs of electronic discovery.

6. THIRD-PARTY DISCOVERY.

A. A Party that issues a non-Party subpoena (the "Issuing Party") shall include a copy of this Order and the order concerning confidentiality agreed and/or entered in this litigation with the subpoena and state that the Parties in the litigation have requested that third-Parties produce documents in accordance with the specifications set forth herein.

B. The Issuing Party shall produce a copy to all other Parties documents and ESI (including any metadata) obtained under subpoena to a non-Party.

C. If the non-Party production is not Bates-stamped, the Issuing Party will endorse the non-Party production with unique Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

SO ORDERED.

Dated: _____

Honorable Alfred Covello
United States District Court Judge

STIPULATED AND AGREED TO BY:

/s/ David A. Ettinger

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Attorneys for Defendants

SCHEDULE A: PRODUCTION FIELDS

Field Name	Description (E-Mail)	Description (Non-E-mail Loose File or E-mail Attachment)
AtchIDs	Delimited list of beginning document Bates numbers of each attachment, populated for the PARENT email.	Delimited list of beginning document Bates numbers of each attachment, populated for the PARENT container (zip/rar/etc.).
Author	N/A	The person who originally created the electronic file.
BCC	All information contained in the "BCC" field of the e-mail, as well as all other discernable blind copyees.	N/A
BegAtch	Number endorsed on first page of first document in a family (<i>i.e.</i> , documents and all attachments thereto).	Number endorsed on first page of first document in a family (<i>i.e.</i> , documents and all attachments thereto).
BegDoc# (or DocID)	Number endorsed on first page of document.	Number endorsed on first page of document.
CC	All information contained in the "CC" field of the e-mail, as well as all other discernible copyees.	N/A
ConfDes	The confidential designation endorsed on the document, if present.	The confidential designation endorsed on the document, if present.
DateLastMod	N/A	Date the document was last modified. (MM/DD/YYYY).
TimeLastMod		Time the document was last modified in hh:mm:ss format.
Date Created		Date the document was created (MM/DD/YYYY).
Time Created		Time the document was created in hh:mm:ss format
DateSent	Date the E-mail was sent, expressed in MM/DD/YYYY format.	N/A
DateReceived	Date the E-mail was received expressed in MM/DD/YYYY format	N/A
EndAtch	Number endorsed on last page of last document in a family (<i>i.e.</i> , documents and all attachments thereto).	Number endorsed on last page of last document in a family (<i>i.e.</i> , documents and all attachments thereto).
EndDoc#	Number endorsed on last page of	Number endorsed on last page of

Field Name	Description (E-Mail)	Description (Non-E-mail Loose File or E-mail Attachment)
	document.	document.
FileExt	Displays the extension of the file (msg, eml).	Displays the extension of the file (doc, xlsx).
FileName	Original file name, including file extension (Example.MSG).	Original file name, including file extension (Example.XLS, or Example.DOC).
From	All information contained in the "From" field of the e-mail.	N/A
NativeFile	If files produced in native path to file (e.g. NATIVE\samplefile.xls), and an active hyperlink should be included in the data load files for use in document review databases.	If files produced in native path to file (e.g. Attachments\ samplefile.xls), and an active hyperlink should be included in the data load files for use in document review databases.
ParentID	Beginning document Bates number of the parent email, populated for each ATTACHMENT	
Extracted Text Path	File path to the extracted text/OCR file, or the extracdted/OCR file link (e.g. ABC001\Text\001\ABC0000001.txt)	File path to the extracted text/OCR file, or the extracdted/OCR file link (e.g. ABC001\Text\001\ABC0000001.txt)
File Path		Original file path
MessageID	Message ID of email	N/A
Conversation Index	Conversation Index for email	N/A
Redacted	Indication as to whether the document contains redactions	Indication as to whether the document contains redactions
Custodian	Custodial or non-custodial source(s) identified from which the document was collected.	Custodial or non-custodial source(s) identified from which the document was collected.
All Custodians	For documents that have been deduplicated, the identity of other Custodians who also had the identical document. .	For documents that have been deduplicated, the identity of other Custodians who also had the identical document. .
Subject	Verbatim subject or re: line, as extracted from the e-mail.	
Document Title	N/A	Document title as extracted from the metadata of the file if present. It will not be manually coded if absent in the metadata, and will not be manually coded for paper documents.
TimeSent	Time the email message was sent in hh:mm:ss format.	N/A

Field Name	Description (E-Mail)	Description (Non-E-mail Loose File or E-mail Attachment)
ReceivedTime	Time the email message was sent in hh:mm:ss format.	N/A
To	All information contained in the "To" field of the e-mail.	N/A
Production Volume	Production media volume name, e.g. "VOL001"	Production media volume name, e.g. "VOL001"
MD5 Hash	MD5 hash value.	MD5 hash value.

EXHIBIT B

Roberts, Nicole

From: CMECF@ctd.uscourts.gov
Sent: Tuesday, July 26, 2022 10:27 AM
To: CMECF@ctd.uscourts.gov
Subject: Activity in Case 3:22-cv-00050-SVN Saint Francis Hospital and Medical Center v. Hartford HealthCare Corporation et al Order on Motion for Protective Order

[EXTERNAL EMAIL]

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Connecticut

Notice of Electronic Filing

The following transaction was entered on 7/26/2022 at 10:27 AM EDT and filed on 7/26/2022

Case Name: Saint Francis Hospital and Medical Center v. Hartford HealthCare Corporation et al

Case Number: 3:22-cv-00050-SVN

Filer:

Document Number: 91(No document attached)

Docket Text:

ORDER granting [90] Joint Motion for Protective Order, given that there is no objection. The Court hereby adopts the proposed order appended at ECF No. [90-1]. Signed by Judge Sarala V. Nagala on 7/26/2022. (Rennie, Carolyn)

3:22-cv-00050-SVN Notice has been electronically mailed to:

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3:22-cv-00050-SVN Notice has been delivered by other means to:

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL
CENTER, INC.,

Plaintiff,

Case No. 22-cv-00050

Judge Sarala V. Nagala

v.

HARTFORD HEALTHCARE CORPORATION,
HARTFORD HOSPITAL, HARTFORD
HEALTHCARE MEDICAL GROUP, INC.,
INTEGRATED CARE PARTNERS, LLC,

Defendants.

[PROPOSED] PROTECTIVE ORDER

1. It is hereby ordered by the Court that the following shall apply to information, documents, excerpts from documents, and other materials produced in this action pursuant to Federal and Local Rules of Civil Procedure governing disclosure and discovery:

2. Information, documents and other materials may be designated by the producing party in the manner permitted (“the Designating Person”). All such information, documents, excerpts from documents, and other materials will constitute “Designated Material” under this Order. The designation shall be either (a) “CONFIDENTIAL” or (b) CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” This Order shall apply to Designated Material produced by any party or third-party in this action.

3. “CONFIDENTIAL” information means information, documents, or things that have not been made public by the disclosing party and that the disclosing party reasonably and in good faith believes contains or comprises (a) trade secrets, (b) proprietary business information, or (c) information implicating an individual’s legitimate expectation of privacy.

4. “CONFIDENTIAL-ATTORNEY’S EYES ONLY” means CONFIDENTIAL information that the disclosing party reasonably and in good faith believes is so highly sensitive that its disclosure to a competitor could result in significant competitive or commercial disadvantage to the designating party.

5. Designated Material shall not be used or disclosed for any purpose other than the litigation of this action and may be disclosed only as follows:

- a. *Parties:* Material designated “CONFIDENTIAL” may be disclosed to parties to this action or directors, officers and employees of parties to this action, who have a legitimate need to see the information in connection with their responsibilities for overseeing the litigation or assisting counsel in preparing the action for trial or settlement. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.
- b. *Witnesses:* Designated Material, including material designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” may be disclosed to a witness in this action, but only for purposes of testimony in this case, whether at trial, hearing, or deposition, but it may not be retained by the witness. Such witnesses must be persons whom Plaintiff or Defendants believe, in good faith, had prior personal and actual access to the particular material designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEY’S EYES ONLY, or persons whose statements are expressly mentioned, discussed or referred to in the material as indicated on its face.

- c. *Authors*: Authors, addressees, and recipients of material designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY solely to the extent that they have previously had lawful access to the material disclosed or to be disclosed.
- d. *Outside Experts*: Designated Material, including material designated "CONFIDENTIAL-ATTORNEYS' EYES ONLY," may be disclosed to an outside expert for the purpose of obtaining the expert's assistance in the litigation. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order, by signing a document substantially in the form of Exhibit A.
- e. *Counsel*: Designated Material, including material designated "CONFIDENTIAL-ATTORNEYS' EYES ONLY," may be disclosed to outside counsel of record and their associates, paralegals, and regularly employed office staff as well as: (1) John D'Ambrosio, designated in-house counsel for the Defendants, who is not involved in competitive decision-making for Defendants; and (2) Aimee Stow, designated in-house counsel for Plaintiff, who is not involved in competitive decision-making for Plaintiff. A party may designate additional in-house counsel to whom material designated "CONFIDENTIAL-ATTORNEYS' EYES ONLY" may be disclosed provided the identity and job functions of the in-house attorney(s) are disclosed to the producing party and written consent is obtained from the opposing party, which consent shall not unreasonably be withheld.

f. *Other Persons*: Designated Material may be provided as necessary to copying services, translators, and litigation support firms. Before Designated Material is disclosed to such third parties, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

6. Prior to disclosing or displaying any Designated Material to any person, counsel shall:

- a. Inform the person of the confidential nature of the Designated Material; and
- b. Inform the person that this Court has enjoined the use of the Designated Material by him/her for any purpose other than this litigation and has enjoined the disclosure of that information or documents to any other person.

7. The confidential information may be displayed to and discussed with the persons identified in Paragraphs 5(c) only on the condition that, prior to any such display or discussion, each such person shall be asked to sign an agreement to be bound by this Order in the form attached hereto as Exhibit A. In the event such person refuses to sign an agreement in substantially the form attached as Exhibit A, the party desiring to disclose the confidential information may seek appropriate relief from the Court.

8. A person having custody of Designated Material shall maintain it in a manner that limits access to the Designated Material to persons permitted such access under this Order.

9. Counsel shall maintain a collection of all signed documents by which persons have agreed to be bound by this Order.

10. Documents shall be designated by stamping or otherwise marking the documents with the words “CONFIDENTIAL” or “CONFIDENTIAL-FOR ATTORNEYS’ EYES ONLY” thus clearly identifying the category of Designated Material for which protection is sought under the terms of this Order. Designated Material not reduced to documentary form shall be designated by the producing party in a reasonably equivalent way.

- a. When electronically stored information is produced which cannot itself be marked with the designation CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY, the physical media on which such electronically stored information is produced shall be marked with the applicable designation.
- b. The inadvertent failure to designate as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY any document, transcript, or other material containing CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY information prior to its disclosure shall not be deemed a waiver in whole or in part of a claim that such material constitutes CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY information. The disclosing party may retroactively designate as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY any document, transcript, or other material containing CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY that it inadvertently disclosed by notifying the parties in writing as soon as practicable after learning of the inadvertent disclosure. After receiving such notice, the parties must thereafter treat the newly designated material as

CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY as applicable and the parties must cooperate to restore the proper designation of the inadvertently disclosed material. No prior or disclosure of newly designated material shall be considered a violation of this Protective Order.

11. The parties will use reasonable care to avoid designating as confidential documents or information that does not need to be designated as such.

12. A party may submit a request in writing to the party who produced Designated Material that the designation be modified or withdrawn. If the Designating Person does not agree to the redesignation, or fails to meet and confer in good faith after receipt of the written request for redesignation, within ten business days, the objecting party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Person to show why the designation is proper. Before filing such an application, the objecting party must attempt in good faith to meet and confer with the Designating Person in an effort to resolve the matter. Any opposition shall be due within ten business days after such an application is filed, and any reply shall be due within five business days after the opposition is filed. The parties may extend or shorten these dates by mutual agreement or by seeking permission from the Court, and a party's consent should not be unreasonably withheld. The Court may award sanctions if it finds that a party's position was taken without substantial justification.

13. Deposition transcripts or portions thereof may be designated either (a) when the testimony is recorded, or (b) by written notice to all counsel of record, given within ten business days after the Designating Person's receipt of the transcript in which case all counsel receiving such notice shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the Designating Person. Pending expiration of

the ten business days, the deposition transcript shall be treated as designated as CONFIDENTIAL-ATTORNEYS' EYES ONLY. When testimony is designated at a deposition, the Designating Person may exclude from the deposition all persons other than those to whom the Designated Material may be disclosed under paragraph 5 of this Order. Any party may mark Designated Material as a deposition exhibit, provided the deposition witness is one to whom the exhibit may be disclosed under paragraph 5 of this Order and the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material.

14. Any Designated Material which becomes part of an official judicial proceeding or which is filed with the Court is public. Such Designated Material will be sealed by the Court only upon motion and in accordance with applicable law, including Rule 5(e) of the Local Rules of this Court. This Protective Order does not provide for the automatic sealing of such Designated Material. If it becomes necessary to file Designated Material with the Court, a party must comply with Local Civil Rule 5 by moving to file the Designated Material under seal.

15. Filing pleadings or other papers disclosing or containing Designated Material does not waive the designated status of the material. The Court will determine how Designated Material will be treated during trial and other proceedings as it deems appropriate.

16. Upon final termination of this action, all Designated Material and copies thereof shall be returned promptly (and in no event later than forty-five (45) days after entry of final judgment), returned to the producing party, or certified as destroyed to counsel of record for the party that produced the Designated Material, or, in the case of deposition testimony regarding designated exhibits, counsel of record for the Designating Person. Alternatively, the receiving party shall provide to the Designating Person a certification that all such materials have been destroyed.

17. Inadvertent production of confidential material prior to its designation as such in accordance with this Order shall not be deemed a waiver of a claim of confidentiality. Any such error shall be corrected within a reasonable time.

18. Nothing in this Order shall require disclosure of information protected by the attorney-client privilege, or other privilege or immunity, and the inadvertent production of such information shall not operate as a waiver. If a Designating Party becomes aware that it has inadvertently produced information protected by the attorney-client privilege, or other privilege or immunity, the Designating Party will promptly notify each receiving party in writing of the inadvertent production. When a party receives notice of such inadvertent production, it shall return all copies of inadvertently produced material within three business days. Any notes or summaries referring or relating to any such inadvertently produced material subject to claim of privilege or immunity shall be destroyed forthwith. Nothing herein shall prevent the receiving party from challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege designation by submitting a challenge to the Court. The Designating Party bears the burden of establishing the privileged nature of any inadvertently produced information or material. In the event of a challenge to the propriety of the designation by a receiving party, such party may retain a copy of the disputed documents, but shall refrain from distributing or otherwise using the inadvertently disclosed information or material for any purpose until any issue of privilege is resolved by agreement of the parties or by the Court. Notwithstanding the foregoing, a receiving party may use the inadvertently produced information or materials to make a motion challenging the privilege designation. If a receiving party becomes aware that it is in receipt of information or materials which it knows or reasonably should know is privileged, Counsel for the receiving party shall immediately take steps to (i) stop reading such information or materials, (ii)

notify Counsel for the Designating Party of such information or materials, (iii) collect all copies of such information or materials, (iv) return such information or materials to the Designating Party, and (v) otherwise comport themselves with the applicable provisions of the Rules of Professional Conduct.

19. Nothing in this Order will bar or otherwise restrict Counsel from rendering advice to his or her client with respect to this matter or from generally referring to or relying upon “CONFIDENTIAL” or “CONFIDENTIAL-FOR ATTORNEYS’ EYES ONLY” material in rendering such advice. Such advice cannot include, however, disclosure of specific information contained in “CONFIDENTIAL” or “CONFIDENTIAL – FOR ATTORNEYS’ EYES ONLY” material, unless otherwise permitted under this Protective Order.

20. The foregoing is entirely without prejudice to the right of any party to apply to the Court for any further Protective Order relating to Designated Material; or to object to the production of Designated Material; or to apply to the Court for an order compelling production of Designated Material; or for modification of this Order; or to seek any other relief from the Court.

21. The restrictions imposed by this Order may be modified or terminated only by further order of the Court.

SO ORDERED.

Dated:

U.S. District Judge Sarala V. Nagala

We so move and stipulate, and agree to abide by the terms of this Order

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Attorneys for Plaintiff

We so move and stipulate, and agree to abide by the terms of this Order

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EXHIBIT A

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled _____ have been designated as confidential. I have been informed that any such documents or information labeled “CONFIDENTIAL PRODUCED PURSUANT TO PROTECTIVE ORDER” are confidential by Order of the Court.

I hereby agree that I will not disclose any information contained in such documents to any other person. I further agree not to use any such information for any purpose other than this litigation.

DATED: _____

Signed in the presence of:

_____ (Attorney)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND : CASE NO. 3:22cv00050 (SVN)
MEDICAL CENTER :
v. :
HARTFORD HEALTHCARE : APRIL 14, 2023
CORPORATION, ET AL. :

**MEMORANDUM OF NON-PARTY CONNECTICUT HOSPITAL ASSOCIATION IN
SUPPORT OF ITS MOTION TO QUASH SUBPOENA**

Non-party Connecticut Hospital Association (“CHA”) respectfully submits this memorandum of law in support of its Motion to Quash the Subpoena served on it by the Plaintiff, Saint Francis Hospital and Medical Center (“Saint Francis”). The Subpoena is attached as Exhibit A to CHA’s Motion.

For the reasons set forth below, CHA is precluded by the Privacy Rule of the Health Insurance Portability and Accountability Act (“HIPAA”), and other federal and Connecticut state laws, from producing the privileged and protected patient data requested by the Subpoena, and the Subpoena must be quashed on that basis alone. In addition, the provisions of Rule 45 of the Federal Rules of Civil Procedure require the Court to quash the Subpoena because it requests disclosure of HIPAA privileged and protected information, and because the data requested – potentially involving over 63 million patient encounters and 4.5 million patients – imposes an “undue burden” on CHA.

Background

CHA is a not-for-profit membership organization that represents hospitals and health-related organizations. CHA has more than 90 members. On April 5, 2023, CHA was served with the Subpoena requesting that four categories of documents be produced by April 17, 2023 at 9:00 am, 12 days later.¹ The Subpoena's first and primary request demands "[d]ocuments sufficient to show, for all inpatient, newborn, observation, emergency department, same day surgery, and other outpatient visits and encounters at Connecticut hospitals and hospital-based facilities, on an annual basis, during the period from January 1, 2015 to the present" data from 33 separate data fields. *See* Exhibit A.

The information sought by the Subpoena encompasses every individual's care at a Connecticut hospital or related health system facility for over eight years and involves a staggering amount of data. CHA's preliminary review of the information sought by the Subpoena shows that the data requested would expose the health information of over 4.5 million individuals (some of whom are deceased or reside in another state but sought care in Connecticut), and includes data about diagnoses, reproductive health, substance use disorders, and other sensitive or personal data. The scope of information sought represents over 63,000,000 encounters.

¹ While the return date on the Subpoena is April 17, 2023, Exhibit A to the Subpoena demands production by April 14, 2023, making CHA's response time even shorter if that date controlled. In any event, requiring production in such a short time frame would be an independent basis to quash the Subpoena, particularly given the staggering amount of data requested. *See* Rule 45(d)(3)(A)(requiring that a Subpoena be quashed when it "fails to allow a reasonable time to comply.").

Argument

A. HIPAA Precludes Compliance by CHA with a Rule 45 Subpoena

Even if CHA could comply in 12 days with a subpoena requiring it to produce this massive amount of data (it couldn't), HIPAA precludes it from doing so simply in response to a Rule 45 subpoena issued by one of the parties to this lawsuit.

The HIPAA Privacy Rule, 45 CFR Part 160 and Subparts A and E of Part 164, is a comprehensive set of regulations designed to protect patient information. The HIPAA Privacy Rules prohibit covered entities or their business associates from disclosing a patient's protected health information ("PHI") in a manner inconsistent with the Privacy Rule's provisions.

Here, CHA itself has no original records responsive to the Subpoena's requests. Rather, CHA possesses copies of these records, which contain patients' PHI, as a HIPAA "business associate" of other HIPAA covered entities, in this case the acute care hospitals in Connecticut that are members of the CHA.² As a HIPAA "business associate" CHA performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. *See* 45 CFR 160.103. Under this business associate arrangement, CHA's members entrust CHA with their patient data, and consequently CHA has a HIPAA imposed duty to patients and providers to safeguard that data.

CHA cannot disclose the PHI in its possession simply based on a Rule 45 Subpoena issued by a party to the underlying lawsuit. The Subpoena seeks patient information that is identifiable at a patient level and is therefore governed by HIPAA rules applicable to PHI. Under these circumstances, HIPAA prohibits responding to a subpoena with the disclosure of

² "Covered entity" is the HIPAA term for a health care provider or health plan that is subject to HIPAA Rules.

patient medical records. Rather, before CHA could disclose this data, HIPAA requires either individual patient consent for such disclosure, a court order, or “satisfactory assurances” which would require a qualified protective order. *See* 45 CFR § 164.512(e).

Given the massive amount of data and the fact that data concerning millions of patients are potentially involved, individual patient consent is obviously not an available option, leaving a Court order or the provision of “satisfactory assurances” as the only available means for obtaining the requested data. There is no Court Order now in place, and if the parties were to pursue one CHA would vigorously object. Moreover, “satisfactory assurances” do not compel disclosure, it is merely a route for a covered entity or business associate to avoid HIPAA liability if a disclosure were to be made. And, in any event, the option for satisfactory assurances involving individual patient notice found in 45 CFR § 164.512(e)(1)(ii)-(iv) seems infeasible given this broad request for over 63,000,000 records and involving 4.5 million patients.

For now, there is no Court order and no qualified protective order, of which CHA is aware. Absent one or the other, CHA is precluded from complying with the Subpoena and it should be quashed on that basis alone.³

Moreover, allowing the litigants in this matter to have access to the HIPAA protected, identifiable data in this context creates significant privacy and security risks. HIPAA regulations

³Even if there were an applicable protective order satisfying HIPAA, other federal and state laws would provide a basis to quash the Subpoena. For example, federal regulations govern records of substance use disorder providers and facilities and provide privacy protections beyond HIPAA protections. These regulations contemplate that each patient must consent to each disclosure and require that a court undertake review of each patient’s file to determine if disclosure is warranted. 42 CFR § 2.64. Application of that regulation would require an *in camera* inspection of tens of thousands of records. Many records not specifically covered by 42 CFR part 2 still include reference to a history of substance use disorders, or use of opioid reversal medications, all of which could be damaging to patients’ reputations and mental health if the data were disclosed. Moreover, Connecticut recently passed a law that strictly prohibits providers from responding to a subpoena with patient information when that information would disclose details relating to reproductive healthcare or gender affirming care. Connecticut’s statutes require each patient’s express consent for release of such records when responding to a subpoena. Conn. Gen. Stat. §§ 52-146w and 52-146x.

include the “minimum necessary standard” that is designed to limit the types of information disclosed, and the pool of people receiving or accessing that information to the fewest feasible. 45 CFR § 164.502(b); 45 CFR § 164.514(d). Those well-established patient protections would not be met by allowing the litigants in this case unfettered access to patient data.

It is not evident that patients whose data is at risk would have any recourse if the data were misused, redisclosed, or hacked. It is not clear whether the receiving parties or their consultant would have any obligations or liability for breach or mishandling of the data, unintentional or intentional, leaving patients exposed in a way they are not when information is subject to HIPAA or other laws that clarify the responsibilities owed to patients. This exposure includes, for example, putting patients at risk in the event that there are disclosures or redisclosures, even if unintentional, of patient files to authorities in states that have announced their intention to use patients’ health data to prosecute patients for exercising their rights to seek reproductive healthcare, and to prosecute providers, friends or family who assist those patients.

CHA’s compliance with the subpoena’s request for PHI would also risk violating the federally granted privacy rights of each individual involved (including deceased individuals), and expose CHA to liability for disclosing PHI. *Byrne v. Avery Center for Obstetrics & Gynecology, PC*, 327 Conn. 540, 571-73, 175 A.3d 1 (2018) (noting that “[t]he regulations promulgated under HIPAA require specific steps prior to making any disclosure of protected health information pursuant to a subpoena” and finding that failure to follow those steps “gives rise to a cause of action sounding in tort against the health care provider, unless the disclosure is otherwise allowed by law.”).

For all these reasons, and to best protect patients' rights, CHA respectfully requests that the Court quash the Subpoena, thus preventing the mass disclosure of every hospital patient's PHI.

B. Rule 45 Requires That the Court Quash the Subpoena

Rule 45 of the Federal Rules of Civil Procedure also requires the Court to quash the Subpoena. Rule 45(d)(3)(A)(iii) and (iv) provides that the Court is required to quash a subpoena when the Subpoena (1) "requires disclosure of privileged or other protected matter" where "no exception or waiver applies" or (2) when the subpoena "subjects a person to undue burden."

As set forth above, the Subpoena requires the disclosure of data that is not only privileged and protected by HIPAA, but, depending on the type of data at issue, is also protected by various other federal and Connecticut state laws. On that basis, Rule 45 (d)(3)(A)(iii) requires the Court to quash the Subpoena.

Moreover, complying with the Subpoena -- even if that were possible for CHA to do (and it is not possible given the privacy restrictions described above) -- would impose an "undue burden" on CHA. Rule 45 (d)(3)(A)(iv). Whether the Subpoena imposes an "undue burden" depends on many factors, including "relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed." *Hughes v. Twenty-First Century Fox, Inc.*, 327 F.R.D. 55, 57 (S.D.N.Y. 2018).

In the short time since the service of the Subpoena, CHA has not learned from Saint Francis what relevance the requested privileged records have to the underlying litigation.⁴

⁴ Undersigned counsel wrote to the lawyer issuing the Subpoena, alerted him to the HIPAA issues preventing CHA's compliance and requested that the Subpoena be withdrawn. We received no response.

Nevertheless, other factors show that the burden on CHA is unquestionably an “undue” one. The Subpoena seeks over eight (8) years of data, which would involve the production of records involving millions of patients and many more millions of patient encounters. CHA could not possibly produce this data in less than 2 weeks-time. In fact, it would take CHA a significant amount of time (weeks, at least), and resources, to prepare the requested files for disclosure. This expensive undertaking would displace CHA’s other work, including but not limited to support of its member hospitals in public health activities and reporting, ongoing quality and patient safety work, and ongoing community health work. Moreover, the parties to this lawsuit have their own data available to them in their own record systems and should not have any need to retrieve additional copies of those same files from CHA.

Conclusion

For all the foregoing reasons, the Subpoena should be quashed in its entirety, and CHA relieved from any obligation to produce privileged and protected information in its possession.

Respectfully submitted,

CONNECTICUT HOSPITAL ASSOCIATION

By: /s/ Joseph W. Martini

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CERTIFICATION

I hereby certify that on April 14, 2023, a copy of the foregoing Motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Joseph W. Martini
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