

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 INS 738

BLUE CROSS AND BLUE SHIELD)
 OF NORTH CAROLINA,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA STATE)
 HEALTH PLAN FOR)
 TEACHERS AND STATE)
 EMPLOYEES,)
)
 Respondent,)
)
 and)
)
 AETNA LIFE INSURANCE)
 COMPANY,)
)
Respondent-Intervenor.)

JOINT MOTION FOR QUALIFIED PROTECTIVE ORDER

NOW COME the parties in this contested case, Petitioner Blue Cross and Blue Shield of North Carolina (“Blue Cross NC”), Respondent North Carolina State Health Plan for Teachers and State Employees (“State Health Plan”) and Respondent-Intervenor Aetna Life Insurance Company (“Aetna”) (collectively referred to as the “Parties”), by and through their respective counsel, and jointly move the Tribunal for the entry of a Qualified Protective Order, under the HIPAA Privacy Rule, codified at 45 C.F.R. § 164.500 *et seq.*

This contested case involves the appeal by Blue Cross NC of an administrative agency decision pursuant to a request for proposals (“RFP”) to award a contract for third-party administrator services to Aetna and to reject the proposal by Blue Cross NC. Discovery sought in

this case includes certain protected health information (“PHI”) concerning patients historically served by the State Health Plan and Blue Cross NC, which the Parties may contend are relevant and material to the adjudication of issues in this contested case.

The parties recognize that the United States Department of Health and Human Services has issued final regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy of “Individually Identifiable Health Information” that has been obtained, created, or maintained by certain entities, including the State Health Plan and Blue Cross NC. Any disclosure of such information, including identifying information such as a home address or payor source, is deemed to be Protected Health Information, subject to protection under HIPAA, which limits the circumstances under which such information may be disclosed. However, under 45 C.F.R. § 164.512(e), Individually Identifiable Health Information may be disclosed by health care providers like the Parties in the course of a judicial or administrative proceeding after issuance by the Court or Administrative Tribunal of a Qualified Protective Order meeting the HIPAA standards for such orders which are set out in 45 C.F.R. § 164.512(e)(1)(v).

Accordingly, to comply with the HIPAA Privacy Rule standards set out in 45 C.F.R. § 164.512(e)(1)(v), the parties request that a Qualified Protective Order be entered in this contested case to control the use and disclosure of Individually Identifiable Health Information concerning individual patients if any such information is ultimately produced.

WHEREFORE, the Parties move for the entry of a Qualified Protective Order in the form set forth in Exhibit A.

This the 25th day of April, 2023.

ROBINSON, BRADSHAW &
HINSON, P.A.

/s/ Nathan C. Chase, Jr.

Matthew W. Sawchak
N.C. State Bar No. 17059
msawchak@robinsonbradshaw.com
Stephen DJ. Feldman
N.C. State Bar No. 34940
sfeldman@robinsonbradshaw.com
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
Telephone: (919) 239-2600
Facsimile: (919) 328-8790

Nathan C. Chase, Jr.
N.C. State Bar No. 39314
nchase@robinsonbradshaw.com
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
Telephone: (704) 377-2536
Facsimile: (704) 378-4000

*Counsel for Petitioner Blue Cross and Blue
Shield of North Carolina, Inc.*

FOX ROTHSCHILD LLP

/s/ Marcus C. Hewitt

Marcus C. Hewitt
N.C. State Bar No. 23170
mhewitt@foxrothschild.com
Elizabeth Sims Hedrick
N.C. State Bar No. 38513
ehedrick@foxrothschild.com
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Telephone: (919) 755-8700
Facsimile: (919) 755-8800

WYRICK ROBBINS YATES &
PONTON LLP

/s/ Sophia V. Blair

Lee M. Whitman
N.C. State Bar No. 20193
Lwhitman@wyrick.com
Benjamin N. Thompson
N.C. State Bar No. 9005
bthomposn@wyrick.com
Sophia V. Blair
N.C. State Bar No. 53753
sblair@wyrick.com
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607
Telephone: (919) 781-4000
Facsimile: (919) 781-4865

Attorneys for Respondent-Intervenor

Robert H. Edmunds
N.C. State Bar No. 6602
bedmunds@foxrothschild.com
230 N. Elm Street, Suite 1200
Greensboro, NC 27401

*Attorneys for Respondent North Carolina State
Health Plan for Teachers and State
Employees, a Division of the North Carolina
Department of State Treasurer*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was uploaded electronically with the Office of Administrative Hearings, causing electronic service, as defined in 26 N.C.A.C. 03 .0501(4), to be made upon the following:

Matthew W. Sawchak
msawchak@robinsonbradshaw.com
Stephen DJ. Feldman
sfeldman@robinsonbradshaw.com
Nathan C. Chase, Jr.
nchase@robinsonbradshaw.com

Lee M. Whitman
Lwhitman@wyrick.com
Benjamin N. Thompson
bthomposn@wyrick.com
Sophia V. Blair
sblair@wyrick.com

Counsel for Petitioner Blue Cross and Blue Shield of North Carolina, Inc. Attorneys for Respondent-Intervenor

This the 25th day of April, 2023.

FOX ROTHSCHILD LLP

/s/ Marcus C. Hewitt