

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**AGREED MOTION OF THE UNITED STATES FOR
ENTRY OF PRIVACY ACT AND HIPAA PROTECTIVE ORDER**

Defendant United States of America, by Morris Pasqual, Acting United States Attorney for the Northern District of Illinois, and with the agreement of plaintiff, requests that this court enter the agreed protective order submitted herewith, and in support of this motion states as follows:

1. Plaintiff David Bourke brings this Federal Tort Claims Act lawsuit against the United States of America arising out of medical care provided at the United States Department of Veterans Affairs Hines Medical Center.

2. In accordance with Rule 26(a)(1) of the Federal Rules of Civil Procedure, the United States wishes to produce to plaintiff documents that may be used in support of Bourke's claims and the United States' defenses. However, some of the information contained in these documents may be encompassed by the Privacy Act of 1974, 5 U.S.C. § 552a, or the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 ("HIPAA"). In particular, the United States wishes to produce documents and information pertaining to Bourke's administrative tort claim and medical records in the possession of the United States, all of which may contain personal and/or health care information pertaining to Bourke,

employees of the VA, or other individuals who were involved in the incidents giving rise to this lawsuit.

3. In order to permit the disclosure and discovery of information relevant to the subject matters of this case in a manner that is consistent with the Privacy Act and HIPAA, and does not provide undue public access, the United States requests entry of the protective order submitted herewith. The proposed protective order specifies that documents and information produced by the United States pertaining to plaintiff's administrative tort claim and medical records in the possession of the United States are confidential information that shall be used solely for purposes of this litigation. The proposed order also provides that it is without prejudice to the rights of any party or interested member of the public to make any objection to the designation of information as confidential information, and that within 60 days after the final disposition of this litigation, all persons permitted access to any confidential information that is covered by HIPAA as protected health information, shall destroy the protected health information pursuant to 45 C.F.R. § 164.512(e)(1)(v)(B).

4. The proposed protective order has been agreed to by counsel for all parties.

5. In accordance with the court's standing order, the proposed protective order will be submitted to the court by e-mail.

WHEREFORE, defendant United States requests entry of the agreed protective order submitted herewith.

Respectfully submitted,

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