

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ANDREA COLE )  
 )  
 Plaintiff )  
 )  
 v. )  
 ) Case No. 18-02109-CM-KGG  
 NATIONAL RAILROAD PASSENGER )  
 CORPORATION a/k/a AMTRAK, *et al.* )  
 )  
 Defendants )  
 \_\_\_\_\_ )

**QUALIFIED PROTECTIVE ORDER AUTHORIZING INSPECTION AND  
REPRODUCTION OF PROTECTED HEALTH INFORMATION;  
NOTIFICATION OF WAIVER OF PHYSICIAN-PATIENT PRIVILEGE;**

TO: All Hospitals, Clinics, Pharmacies, Physicians, Social Workers, Psychologists, Psychiatrists, Therapists; Governmental Agencies (State and Federal); and All Other Medical Institutions, Practitioners and Health Care Providers.

You are hereby authorized, pursuant to the laws of Kansas and applicable federal law, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), to make available for examination and reproduction by the parties and their counsel denominated in this lawsuit, any and all medical records or psychotherapy records of any type or nature whatsoever and/or any protected health information within your care, custody, or control concerning **Andrea Cole**.

**RECORDS SUBJECT TO ORDER**

Unless specifically excluded by this Order, all medical and mental health records and protected health information, including psychiatric records, in your possession regarding Andrea Cole may be disclosed. Medical documents and protected health information subject to this Order include but are not limited to:

- Every page of the entire medical chart cover to cover, including but not limited to: all records pertaining to the examination, diagnosis, care and treatment of the patient, patient intake and registration forms; patient insurance and identification information; office narratives; progress notes; prescription orders; lab results; nurse and physician assistant notes; consultation notes; consultation reports; order sheets; handwritten notes; radiological and laboratory reports; itemized billing statements listing all charges; radiographic films, photographs and videotapes; monitoring strips of any kind; any and all records related to the diagnosis and treatment of mental or emotional condition; and psychotherapy notes that are part of the medical record.
- All “Secondary Records,” regardless of whether generated by you. Secondary Records include: patient questionnaires; phone message slips; correspondence with patient; and all documents contained in the patient’s office chart from other health care providers, insurance representatives, attorneys or governmental agencies, including but not limited to medical records as defined above and all correspondence and hospitalization records.
- Any and all records related to the diagnosis and treatment of mental illness or problems or emotional condition, including any psychotherapy notes that are part of the medical record. The plaintiff/patient has made a full and knowing waiver of the statutory privilege provided these records under K.S.A. 65-5602.

PARTIES ENTITLED TO RECORDS; EXPENSE OF PRODUCTION

Any attorney of record herein as set forth below may request inspection and reproduction of medical records. Clerical fees and expenses as permitted under K.S.A. 65-4971 shall be paid by the attorney making the request for examination and reproduction.

WAIVER OF PHYSICIAN-PATIENT PRIVILEGE  
& EX-PARTE COMMUNICATION

You are further notified, pursuant to federal and state law, that undersigned counsel of record are hereby authorized and permitted to meet with or speak to Andrea Cole’s treating physicians and other health care providers without counsel or the parties, including Andrea Cole, being present or participating, provided the healthcare provider consents to the interview and is provided with a copy of this order prior to the interview. This is based

on the Court's finding that Andrea Cole has waived the physician-patient privilege, defined at K.S.A. 60-427, between herself and her health care providers by making claims in the State of Kansas for the recovery of damages based on personal injury to Ms. Cole.

Although this Order authorizes and permits all health care providers of the aforementioned Andrea Cole to grant informal interviews, the Order does not require a health care provider to meet or speak with any attorney in this proceeding. A physician or other health care provider has a right to decline an attorney's request to speak or meet with the physician or other health care provider informally.

Defendants' counsel are directed that, before conducting any such *ex parte* interviews, they shall advise the treating physicians that they are under no obligation to agree to communicate *ex parte* with counsel.

#### HIPAA-COMPLIANT PROTECTIVE PROVISIONS

Pursuant to 45 C.F.R. § 164.512, any party receiving information from a covered health provider pursuant to this Order is prohibited from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and, any party having received the protected health information shall destroy the protected health information (including all copies made), or return it to the covered entity within 30 days after the end of the litigation or proceeding.

This Order complies with HIPAA federal standards for privacy of individually identifiable health information, 45 C.F.R. Parts 160 and 164 and Kansas Statutes Annotated, K.S.A. 60-427 (physician-patient privilege). This Order also allows the disclosure of information regarding diagnosis and treatment of mental and emotional

condition pursuant to K.S.A. 65-5601 et seq. (treatment facility privilege), K.S.A. 74-5323 and 74-5372 (psychologist-patient privilege) and 42 C.F.R. Part 2.

DURATION OF ORDER

This Order shall be effective throughout the pendency of this action.

IT IS SO ORDERED.

Dated this 30<sup>th</sup> day of July, 2018.

S/ KENNETH G. GALE  
The Honorable Kenneth G. Gale  
U.S. Magistrate Judge