

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

OPTUMRX, INC.,)	
)	Case Nos. 20 TT 30 & 20 TT 109 (Cons.)
Petitioner,)	
)	
v.)	
)	Chief Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

AGREED PROTECTIVE ORDER

The parties to this Agreed Protective Order have agreed to the terms of this Order; accordingly, it is ORDERED:

1. Scope. All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom, or as an attachment to a pleading or at a hearing, (hereinafter collectively "documents") shall be subject to this Order concerning Confidential Information as defined below. This Order is subject to the Illinois Independent Tax Tribunal Rules on matters of procedure and calculation of time periods.

2. Confidential Information. Shall mean any type or class of information produced by any party or any nonparty in response to a discovery request, subpoena, or during a deposition that can reasonably be considered sensitive to disclosure (including but not limited to minutes and records of the board of directors of corporations, financial information, tax returns or commercial information) which either party in the above-captioned matter designates as "Confidential" whether it be a document, information contained in a document, information revealed as a response to a discovery request, subpoena, or during a deposition.

3. General Rule. Any party may designate a document as Confidential Information for protection under this Order by placing or affixing the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on each page of the document and on all copies in a manner that will not interfere with the legibility of the document. The marking "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall be applied prior

to or at the time the documents are produced or disclosed. Applying the marking "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" to a document does not mean that the document has any status of protection by statute or otherwise except to the extent and for the purposes of this Order. Any copies that are made of any documents marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information are not required to be marked. The designation of a document as Confidential Information is a certification by the attorney that the document contains Confidential Information as defined in this order.

4. Use of Confidential Information. All Confidential Information (and any copies, excerpts, synopses, summaries or digests thereof) shall be used only for the purpose of this action or any subsequent action/appeal of the above-captioned matters in accordance with the terms of this Protective Order and not for any other purpose whatsoever, including business and/or other litigation purposes. All Confidential Information entered into the court record shall, subject to Judge or Court approval, be so entered Under Seal.

5. Limitation on Disclosure. Any party receiving Confidential Information designated by another party shall not use such information for any purpose other than this proceeding or a subsequent action/appeal of the above-captioned matters, or disclose such information to any person not specifically authorized by this Order to receive it. Access to Confidential Information shall be limited to:

a. Counsel of record and attorneys, paralegals, and clerical workers employed by or associated with counsel of record as reasonably needed in the litigation of this case, including any subsequent action/appeal of the above-captioned matters;

b. Officers and management employees of OptumRx, Inc., and its affiliates and employees under the supervision of officers and management employee as reasonably needed in the litigation of this case, including any subsequent action/appeal of the above-captioned matters;

c. Auditors, audit supervisors, audit management, and any other personnel of the Illinois Department of Revenue as reasonably needed in the litigation of this case, including any subsequent

action/appeal of the above-captioned matters;

d. Retained experts or retained attorneys as reasonably needed in the litigation of this case, including any subsequent action/appeal of the above-captioned matters;

e. The Tribunal, its employees, its reporters, and duplicating company personnel employed in connection with this litigation as reasonably needed in the litigation;

f. A witness or potential witness (and his or her counsel) for the purpose of conducting an examination of such witness during a trial or deposition, or for the purpose of preparing such witness for trial, examination or deposition, or interviewing such witness or potential witness; and

g. Persons whose names appear on those documents as authors or recipients thereof.

6. Disclosure to Third Parties. Confidential Information produced by OptumRx, Inc. may contain trade secrets or other confidential information to be protected and exempt from disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.* (“FOIA”). Department shall notify OptumRx, Inc. if a request is made by a third party to disclose any Confidential Information so as to allow OptumRx, Inc. the opportunity to take necessary steps to prevent disclosure; provided, however that nothing in this Agreed Protective Order shall be read to conflict with Department’s duty to comply with public disclosure laws, including FOIA.

7. Depositions Involving Confidential Information. Unless all parties agree on the record at the time the deposition testimony is taken, all deposition testimony taken in this case shall be treated as Confidential Information until the expiration of the following: No later than the fourteenth day after the transcript is delivered to any party or the witness, a party may serve a Notice of Designation to all parties of record as to specific portions of the testimony that are designated Confidential Information, and thereafter only those portions identified in the Notice of Designation shall be protected by the terms of this Order. The failure to serve a timely Notice of Designation shall waive any designation of testimony taken in that deposition as Confidential Information, unless otherwise ordered by the Tribunal.

8. Confidential Information Filed with the Tribunal. Any pleading or other document filed with

the Tribunal containing Confidential Information shall be presented for filing in a separate, electronic mail ("email") transmission with the subject "Filed Under Seal" and the body of the email and cover page of the pleading or other document bearing the following legend, in substance:

"Subject to Protective Order: Confidential Information

The contents of this transmission are confidential, filed under seal, and are subject to a protective order of the Tribunal. The contents are not to be made public except upon order of the Tribunal."

For purposes of maintaining a public record of the proceedings, the party filing the pleading or other documents containing Confidential Information shall provide the Tribunal with a redacted copy of the filing, in which all Confidential Information is redacted, for the Tribunal to place on its website.

9. Challenges By a Party to Designation as Confidential Information. The designation of any material or document as Confidential Information is subject to challenge by any party. The following procedure shall apply to any such challenge.

a. Meet and Confer. A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring directly with counsel for the designating party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. The designating party must respond to the challenge within five (5) business days.

b. Judicial Intervention. A party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion in any such challenge proceeding shall be on the designating party. Until the Tribunal rules on the challenge, all

parties shall continue to treat the materials as Confidential Information under the terms of this Order.

10. Presentation of Confidential Information to the Tribunal. Nothing in this Order shall be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential Information at a hearing or trial shall bring that issue to the Tribunal's and parties' attention by motion or in a pretrial memorandum without disclosing the Confidential Information. The Tribunal may thereafter make such orders as are necessary to govern the use of such documents or information at trial. With respect to testimony elicited during hearings and other proceedings, whenever counsel for any party deems that any question or line of questioning calls for the disclosure of Confidential Information, counsel may designate on the record prior to such disclosure that the disclosure contains Confidential Information.

11. Inadvertent Failure to Designate. Inadvertent failure to designate qualified information as Confidential Information does not waive the designating party's right to secure protection for such material; provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as required by this Order, even if inadvertent, waives any protection for deposition testimony. If a party designates a document as Confidential Information after it was initially produced, the party receiving the information, upon timely notification of the designation, must make reasonable efforts to assure that the material is treated according to the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when the material has not been designated Confidential Information, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information.

12. Unauthorized Disclosure of Protected Material. If a party receiving protected material learns that, by inadvertence or otherwise, it has disclosed protected material to any person or in any circumstance not authorized under this Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures; (b) use its best efforts to retrieve all copies of the protected material; and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order.

13. Return of Confidential Information. Materials containing Confidential Information shall be returned to the party producing them or destroyed within thirty (30) days of a final unappealable order in this matter. The party who produces specific Confidential Information has the obligation to notify the receiving party if/when a final unappealable order is reached and/or if/when the materials containing Confidential Information shall be returned or destroyed pursuant to this Order. If materials containing Confidential Information are destroyed, counsel shall certify in writing to the designating party that destruction has occurred. Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and (2) one complete set of all documents filed with the Tribunal including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

14. Duration. Even after the termination of this proceeding, the confidentiality obligations imposed by this Order shall remain in effect until the designating party states otherwise in writing or the Tribunal directs otherwise by order.

15. Order Subject to Modification. This Order shall be subject to modification by the Tribunal on its own initiative, on motion of a party or any other person with standing concerning the subject matter, or without leave of the Tribunal by written agreement of counsel for the parties that shall be filed with the Tribunal.

16. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

So Ordered.

s/ Brian Barov

Brian F. Barov
Administrative Law Judge

Date: April 27, 2021

WE SO MOVE and agree to abide by the terms of this Order

Theodore R. Bots

Signature

Theodore R. Bots

Printed Name
Counsel for OptumRx, Inc.

Date: 04/27/2021

WE SO MOVE and agree to abide by the terms of this Order

/s/ Seth Schriftman

Signature

Seth J. Schriftman

Printed Name
Counsel for Illinois Department of Revenue

Date: 4/27/2021