

Utah Division of Consumer Protection  
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**BEFORE THE DIVISION OF CONSUMER PROTECTION  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

**IN THE MATTER OF:**

**PURDUE PHARMA L.P., a Delaware limited partnership; PURDUE PHARMA INC., a New York corporation; THE PURDUE FREDERICK COMPANY, a Delaware corporation; RICHARD SACKLER, M.D., individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named entities; and KATHE SACKLER, M.D., individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named Respondents.**

**DCP Legal File No. CP-2019-005  
DCP Case No. 107102**

**AGREED PROTECTIVE ORDER**

WHEREAS, certain documents and information have been and may be sought, produced, or exhibited by and among the parties to the above-styled proceeding (the "Action") which relate to the parties' confidential and proprietary information; and

WHEREAS, the parties will provide discovery materials in this Action and the parties agree that a protective order will facilitate a timely and efficient discovery process;

IT IS HEREBY STIPULATED AND AGREED, AND ORDERED THAT:

### **Scope.**

1. This Agreed Protective Order (the "Order") is entered into among Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Richard Sackler, and Kathe Sackler ("Respondents") and the Utah Division of Consumer Protection ("Division"), including the Respondents' and the Division's legal counsel, employees, agents, and representatives (collectively, "the Parties"). The Order shall govern all documents, the information contained therein, and all other information produced or disclosed during this Action whether revealed in a document, other electronically stored information, deposition, other testimony, discovery response or otherwise, by any party in this Action (the "Supplying Party") to any other party or parties (the "Receiving Party").

2. Third parties who are responding to discovery or providing testimony may invoke the terms and conditions of this Protective Order and thereby become a Supplying Party for purposes of this Protective Order.

3. The entry of this Protective Order does not prevent any party from seeking a further order of protection pursuant to the Utah Rules of Civil Procedure or the Utah Administrative Procedures Act.

4. Nothing herein shall be construed to affect in any manner the admissibility at any proceeding of any document, testimony, or other evidence.

### **Confidential and Highly Confidential Information.**

5. Confidential Information. "Confidential Information" and/or "CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER" is defined herein as information that the Supplying Party believes in good-faith to be:

- (a) research, development, financial, or commercial information that the Supplying Party has maintained as confidential and the disclosure of which could reasonably be expected to result in unfair competitive injury to the Supplying Party;
- (b) trade secrets that the Supplying Party has maintained as confidential;
- (c) personal financial documents, data or information;
- (d) information believed to contain “protected health information” and/or “individually identifiable health information,” as defined by 45 CFR Section 160.103;
- (e) personally identifiable information, such as home addresses, personal e-mail addresses, home telephone numbers, Social Security or tax identification numbers, and other similar private information;
- (f) information that is otherwise protected from disclosure by the Privacy Act, 5 U.S.C. Section 552a, or the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, or other applicable law;
- (g) information protected from disclosure pursuant to the Utah Government Records Access and Management Act, §63G-2-101, et seq. (“GRAMA”);
- (h) information protected from disclosure pursuant to the Administrative Procedures Act, §63G-4-101, et seq.
- (i) information that should otherwise be subject to confidential treatment under any rule applicable to civil actions in the Utah Rules of Civil Procedure or any other applicable law; and
- (j) to the extent that a Supplying Party produces, or any Party utilizes, discovery materials in this Action that were produced and designated as

Confidential Information in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio), those discovery materials will be presumed to be “Confidential Information” under this Protective Order until such time as a party elects to challenge those designations in the MDL or in this Action, and a ruling thereon is made by the Presiding Officer, the Administrative law Judge, or the MDL Judge or Special Master. Nothing herein shall restrict the ability of any party to challenge the propriety of a designation of a document produced in this action as “Confidential” regardless of whether it was originally produced in another action. Documents designated as Confidential Information in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio) will be treated as no longer Confidential or Highly Confidential in this Action upon entry of an Order entered by the MDL Judge or Special Master de-designating any such materials, or upon entry of an Order by the Presiding Officer or Administrative Law Judge de-designating any such materials. The decisions of the Presiding Officer and the Administrative Law Judge related to Confidential Information govern only this Action, and do not determine the confidentiality of any materials produced in any other pending litigation.

Documents containing “Confidential Information” pursuant to sub-paragraphs (c), (d), and (e) above may be produced in this Action without a Confidential designation on the document (as set forth in paragraph 7 below) only if the “Confidential Information” is completely redacted. The redacted information shall remain “Confidential Information” subject to the terms of this Protective Order.

6. Highly Confidential Information. “Highly Confidential Information” and/or “HIGHLY CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER” is defined herein as information that the Supplying Party believes in good-faith constitutes or contains information which, if disclosed, disseminated, or used by or to a competitor of the Supplying Party or any other person not permitted to access under this Protective Order could reasonably result in possible antitrust violations or commercial, financial, or business harm. In addition, to the extent that a Supplying Party produces, or any Party utilizes, discovery materials in this Action that were produced and designated as “Highly Confidential” in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio), those discovery materials will be presumed to be “Highly Confidential Information” under this Protective Order until such time as a party elects to challenge those designations in the MDL or this Action and a ruling thereon is made by the Presiding Officer, the Administrative Law Judge, the MDL Court, or the Special Master. Nothing herein shall restrict the ability of any party to challenge the propriety of a designation of a document produced in this action as “Highly Confidential” regardless of whether it was originally produced in another action. Documents designated as Highly Confidential Information in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio) will be treated as no longer Highly Confidential Information in this Action upon entry of an Order entered by the MDL Judge or Special Master de-designating any such materials, or upon entry of an Order by the Presiding Officer or the Administrative Law Judge de-designating any such materials. The decisions of the Presiding Officer and the Administrative Law Judge related to Highly Confidential Information govern only this Action, and do not determine the confidentiality of any materials produced in any other pending litigation.

7. Specific documents and discovery responses produced by a Supplying Party shall, if appropriate, be designated as Confidential Information or Highly Confidential Information by marking the pages of the document that contain Confidential Information or Highly Confidential Information as follows: "CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER" or a similar designation as made in this action or in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio). If a document is produced in native-file format, the Supplying Party shall assign a production number to the native-file document and provide a slip sheet in its production that includes any designation being made for that document. Except in circumstances of documents that qualify as or contain "protected health information" and/or "individually identifiable health information" (collectively, "PHI") that shall be considered Confidential Information regardless of designation, documents that do not bear or, for native-file documents, have not been assigned one of the foregoing designations are not Confidential Information or Highly Confidential Information as those terms are used in this Order.

8. Any materials provided in this Action for inspection are to be treated by the Receiving Party as Confidential Information pending the copying and delivery of any copies of the same by the Supplying Party to the Receiving Party.

9. A Party shall designate information as Confidential or Highly Confidential only if it has a good faith belief that the documents or information qualify as Confidential or Highly Confidential as defined within this Protective Order. Documents or information first designated and produced as Confidential or Highly Confidential in MDL 2804, may also be correspondingly designated Confidential or Highly Confidential under this Protective Order.

10. The Parties are hereby authorized to produce, receive, subpoena, transmit, and utilize PHI relevant to this Action for the purpose of litigating this action, including any appeals, to the extent permitted by relevant federal and state law. The Parties agree not to use or disclose the PHI exchanged through this Action for any other purpose or other proceeding, and then only in accordance with this Order. Nothing in this Order addresses the propriety of or authorizes disclosure or production of: i) information requiring patient notice or consent prior to disclosure; ii) Protected Health Information that is more than the minimum necessary to accomplish the intended purpose with regard to this Action; or iii) any information potentially subject to a state-law privilege or confidentiality protection against discovery.

**Use and Non-Disclosure of Information.**

11. In the absence of written permission from the Supplying Party, an order of the Administrative Law Judge, or an order of the MDL Judge or Special Master in the case of documents designated Confidential or Highly Confidential in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio), any Confidential Information produced or utilized in accordance with the provisions of this Protective Order shall be used solely for purposes of this Action and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

- (a) Outside Counsel and In-House Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;
- (b) Outside contractors or vendor agents retained by the Parties or counsel for the Parties for the limited purpose of making copies of Discovery Material or organizing or processing Discovery Material, including outside vendors hired to process electronically stored documents, copying services, litigation support

services, as well as investigators, trial consultants, but only after such persons agree to be bound by this Protective Order and complete the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

(c) Present or former officers, directors, and employees of a Party, provided that former officers, directors, or employees of the Designating Party may be shown documents prepared after the date of his or her departure only to the extent counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Action and provided that such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

(d) Stenographic employees and court reporters recording or transcribing testimony in this Action;

(e) Employees of the State of Utah or its agencies who are working on this Action, the Presiding Officer, the Administrative Law Judge, and related staff;

(f) Mediators or other third parties appointed by the Presiding Officer or retained by the Parties for settlement purposes or resolution of discovery or other disputes and their necessary staff, provided that they are given a copy of the Order and sign Exhibit A prior to being shown any Confidential or Highly Confidential Information;

(g) Experts and/or consultants, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;



(h) Any individual(s) who authored, prepared, or previously reviewed or received the information;

(i) Those liability insurance companies from which a Respondent has sought or may seek insurance coverage to (i) provide or reimburse for the defense of the Action and/or (ii) satisfy all or part of any liability in the Action, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound; and

(j) Witnesses during depositions or interviews pursuant to U.A.C. R151-4-602, who may be shown, but shall not be permitted to retain, Confidential Information, as provided in Paragraph 15, below.

12. In the absence of written permission from the Supplying Party, an order of the Administrative Law Judge, or an order of the MDL Judge or Special Master in the case of documents designated Confidential or Highly Confidential in *In re National Prescription Opioids Litigation*, Case No. 17-MD-2804 (N.D. Ohio), any Highly Confidential Information produced or utilized in accordance with the provisions of this Protective Order shall be used solely for purposes of this Action and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

(a) Outside Counsel and In-House Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;

(b) Outside contractors or vendor agents retained by the Parties or counsel for the Parties for the limited purpose of making copies of Discovery Material or organizing or processing Discovery Material, including outside vendors hired to process electronically stored documents, copying services, litigation support

services, as well as investigators, trial consultants, but only after such persons agree to be bound by this Protective Order and complete the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

(c) Present or former officers, directors, and employees of a Party, provided that former officers, directors, or employees of the Designating Party may be shown documents prepared after the date of his or her departure only to the extent counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Action and provided that such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

(d) Stenographic employees and court reporters recording or transcribing testimony in this Action;

(e) Employees of the State of Utah or its agencies who are working on this Action, the Presiding Officer, the Administrative Law Judge, and related staff;

(f) Mediators or other third parties appointed by the Presiding Officer or retained by the Parties for settlement purposes or resolution of discovery or other disputes and their necessary staff, provided that they are given a copy of the Order and sign Exhibit A prior to being shown any Confidential or Highly Confidential Information;

(g) Experts and/or consultants, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

(h) Any individual(s) who authored, prepared, or previously reviewed or received the information; and

(i) Witnesses during depositions or interviews pursuant to U.A.C. R151-4-602, who may be shown, but shall not be permitted to retain, Highly Confidential Information.

### **Depositions and Testimony.**

13. Notwithstanding any other provision of this Order, a Party may show Confidential or Highly Confidential Information to any witness during a deposition held in this Action or to any witness during an interview pursuant to U.A.C. R151-4-602. Confidential or Highly Confidential Information shown to any witness during a deposition shall not lose its Confidential or Highly Confidential Information status through such use, and Counsel shall exercise their best efforts and take all steps reasonably required to maintain the information's confidentiality during such use, including designating portions of the deposition transcript or interview recording as Confidential or Highly Confidential. If, after a deposition is noticed or interview scheduled, the Supplying Party objects to Confidential or Highly Confidential Information being shown to that witness, the Supplying Party shall attempt to confer with counsel to resolve the issue no later than seven (7) days prior to the first day of the deposition or interview. If counsel are unable to resolve the issue themselves, counsel may seek an order from the Administrative Law Judge no later than five (5) days prior to the first day of the deposition or interview prohibiting or limiting such use or for other relief.

14. Parties shall have an opportunity to designate Confidential and Highly Confidential Information within deposition transcripts or interview recordings on the record at the time of testimony or within twenty-one (21) days of receipt of the final deposition transcript or interview

recording. Where confidentiality designations of deposition or interview testimony are made orally on the record during a deposition or interview, the Party shall confirm that designation in writing within twenty-one (21) days after receiving the final transcript of the deposition or the interview recording.

15. Witnesses may be shown Confidential and Highly Confidential Information during the course of their depositions or interviews, provided that they are given a copy of the Order and sign Exhibit A prior to being shown Confidential or Highly Confidential information. In the event that a witness refuses to sign Exhibit A at the deposition or interview, the witness nevertheless may be shown and questioned about any document (regardless of confidentiality designation) if:

- (i). it is evident from the document that the witness prepared, received, or reviewed the document prior to its production in this action; or
- (ii). the document relates to policies, procedures, training, or directives for the former employment responsibilities held by the witness.

The use of a document under this provision will not waive the document's confidentiality designation, nor will the witness be entitled to retain a copy of the document absent signing Exhibit A.

16. Unless otherwise excluded by this Order, any witness or expert given access to Confidential or Highly Confidential Information shall sign a certification, in the form annexed hereto as Attachment A, Acknowledgement and Agreement to be Bound, acknowledging that he or she has read this Protective Order and shall abide by its terms.

- (a) If a Party has identified a witness or expert to whom Confidential or Highly Confidential Information needs to be disclosed, but that person refuses to execute

the Acknowledgement and Agreement to be Bound, said Party may seek additional relief from the Administrative Law Judge.

(b) The certification form annexed hereto as Attachment A, Acknowledgement and Agreement to be Bound, is strictly confidential. Counsel for each party shall maintain the certifications without giving copies to the other side. The parties expressly agree, and it is hereby ordered that, except in the event of an apparent violation of this Order, they will make no attempt to seek copies of the certifications or to determine the identities of persons signing them. If the Administrative Law Judge finds that any disclosure is necessary to investigate an apparent violation of this Order, the disclosure may be limited as ordered by the Administrative Law Judge. Persons who come into contact with Confidential or Highly Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Certifications.

17. Before disclosing Confidential or Highly Confidential Information to any person who is a: (i) current director, officer, employee, contractor, agent, or counsel for a pharmaceutical company other than Purdue that is manufacturing or has manufactured opioids; or (ii) a consultant for another pharmaceutical manufacturer regarding opioids, the Party wishing to make such disclosure shall give at least seven (7) days advance notice in writing to the Supplying Party. Said notice shall state the names and addresses of the person(s) to whom the disclosure will be made and the nature of the Confidential or Highly Confidential Information to be disclosed. If, within the seven (7) day period, a motion is filed objecting to the proposed disclosure, the designated document or item shall not be disclosed unless and until the Administrative Law Judge issues an order permitting disclosure.

18. Witnesses shall not retain a copy of documents containing Confidential or Highly Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions solely in connection with review of the transcripts, and must return all copies after their review.

19. Any dispute that arises during the course of a deposition or interview regarding the use of Confidential or Highly Confidential Information may be resolved by contacting the Administrative Law Judge telephonically during the deposition or interview. If the Administrative Law Judge is not immediately available, the Parties shall continue with the deposition or interview. The Party taking the deposition or interview may show the witness the Confidential or Highly Confidential Information to the extent permitted by this Protective Order. The Party taking the deposition or interview must designate the portion of the deposition or interview where the document or information is used as Confidential or Highly Confidential until such time as the matter may be heard by the Administrative Law Judge. The Parties shall coordinate and schedule a hearing before the Administrative Law Judge as soon as possible.

**Use of Confidential or Highly Confidential Information at Hearings.**

20. A Party that intends to present Confidential or Highly Confidential Information at a hearing shall bring that issue to the Administrative Law Judge's and Parties' attention. The Administrative Law Judge may thereafter make such orders, including any stipulated orders, as are necessary to govern the use of Confidential and Highly Confidential Information at the hearing.

(a) The parties will use the following procedure for filing with the Administrative Law Judge material consisting of, containing, or incorporating, Confidential or Highly Confidential Information:

(i) Any such material shall be redacted from publicly filed documents, if appropriate, and shall be filed in a sealed envelope, labeled with the case name, case number, the motion to which the documents relate, and a listing of the titles of the documents in the envelope (such titles not to reveal Confidential or Highly Confidential Information).

(ii) Within seven (7) business days of the submission of any material pursuant to the preceding sub-paragraph, the parties shall confer to determine if the Supplying Party objects to the filing of the subject Confidential or Highly Confidential Information in unsealed form. To the extent the parties reach agreement concerning the treatment of the subject Confidential Information or Highly Confidential Information, the information may be filed in a manner consistent with the agreement. To the extent the parties are unable to reach agreement, the Parties shall notify the Administrative Law Judge, and the Supplying Party shall have seven (7) business days from receipt of said notice to file a motion for a Protective Order demonstrating that the information is properly designated Confidential or Highly Confidential. On such a motion, the Supplying Party shall have the burden of proving that the material is subject to protection pursuant to the Utah Rules of Civil Procedure or the Utah Administrative Procedures Act. The material shall remain sealed and treated as Confidential or Highly Confidential unless and until the Administrative Law Judge orders otherwise.

(b) When submitting deposition testimony that has been designated as Confidential or Highly Confidential Information, the submitting party shall submit,

to the extent reasonably possible, only those pages of the deposition transcript that are cited, referred to, or relied on by the submitting party.

#### **Law Enforcement Entities.**

21. Confidential and Highly Confidential Information may be shared with state or federal law enforcement agencies to the extent the Division believes it is authorized to do so by Utah or federal law, but, unless otherwise required, only after such agencies or entities have executed the certification contained in Attachment A, Acknowledgment and Agreement to be Bound or other Order issued by a Court of competent jurisdiction. Disclosure pursuant to this paragraph will be made only after the Supplying Party has been given seven (7) days' notice in writing of the Receiving Party's intent to disclose, and a description of the materials the Receiving Party intends to disclose. If within the seven (7) day period, a motion is filed objecting to the proposed disclosure, the designated materials shall not be disclosed unless and until the Administrative Law Judge issues an order permitting disclosure.

#### **Regulatory Reporting**

22. Notwithstanding any other provision in the Order, nothing in this Protective Order shall affect or modify Respondents' ability to review the Division's information and report such information to any applicable regulatory agencies.

#### **Control of Documents.**

23. Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential and Highly Confidential Information. Counsel for the Party employing, examining, or interviewing witnesses shall be responsible for obtaining the executed



Acknowledgment and Agreement to be Bound, and shall maintain the originals during the Action and for a period of seven (7) years after the termination of the case.

**Inadvertent Production of Privileged Information.**

24. Any Party's inadvertent disclosure of information or documents subject to a claim of attorney-client privilege, attorney work-product protection, common interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information") to another Party will not in any way prejudice or otherwise constitute a waiver of, or estoppel as to such Privileged Information or generally of such privilege.

(a) Given the complexities associated with large-scale discovery, production of Privileged Information shall be deemed inadvertent whenever the Party asserts in writing that such production was inadvertent.

(b) If a Party discovers that it has inadvertently produced Privileged Information, it shall promptly notify the other Party of the inadvertent production in writing, shall identify the inadvertently produced Privileged Information by Bates range where possible, and may demand that the Party in receipt of the Privileged Information return or destroy the Privileged Information.

(c) If a Party has notified the other Party of inadvertent production, the Party that received that information shall within seven (7) days of receiving such notification or confirmation:

(i) destroy or return all copies or versions of the inadvertently produced Privileged Information;

(ii) delete from its work product or other materials any quoted or paraphrased portions of the inadvertently produced Privileged Information; and

(iii) ensure that inadvertently produced Privileged Information is not disclosed in any manner to any Party or non-Party.

(d) Upon request, the Party claiming inadvertent production shall provide within fourteen (14) days of the request a privilege log describing the basis for the assertion of privilege. Notwithstanding the above, the Party may segregate and retain one copy of the clawed back information solely for the purpose of disputing the claim of privilege. The Receiving Party shall not use any produced Privileged Information in connection with this Action or for any other purpose other than to dispute the claim of privilege. The Party receiving the information may file a motion disputing the claim of privilege and seeking an order compelling production of the material at issue.

#### **Unauthorized Disclosure.**

25. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential or Highly Confidential Information to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must promptly (a) notify the Supplying Party in writing of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Confidential or Highly Confidential Information, (c) inform the person or persons to whom unauthorized disclosures were made of this Protective Order, and (d) request such person or persons complete the certification contained in Attachment A, Acknowledgment and Agreement to be Bound.

26. If a Receiving Party learns of any unauthorized disclosure of Confidential or Highly Confidential Information, the party shall promptly upon learning of such disclosure inform the Supplying Party of all non-privileged pertinent facts relating to such disclosure and shall make all

reasonable efforts to prevent disclosure by each unauthorized person who received such information.

27. Any party that is served with a subpoena or other notice compelling the production of discovery materials containing designated Confidential or Highly Confidential Information produced by another party must promptly give written notice of such subpoena or other notice to the original Supplying Party. Upon receiving such notice, the original Supplying Party shall bear the burden of opposing, if it deems appropriate, the subpoena on grounds of confidentiality.

**No Greater Protection of Specific Documents.**

28. Except on privilege grounds not addressed by this Protective Order, no party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Protective Order unless the party moves for an order providing such special protection.

**Action by the Administrative Law Judge**

29. Except as otherwise provided herein, applications to the Administrative Law Judge for an order relating to materials or documents designated Confidential or Highly Confidential Information shall be by motion. Nothing in this Protective Order or any action or agreement of a Party under this Protective Order limits the Administrative Law Judge's power to make orders concerning the disclosure of documents produced in discovery.

**Confidential or Highly Confidential Information Requested by  
Third Party; Procedure Following Request.**

30. If any person receiving Confidential or Highly Confidential Information covered by this Protective Order (the "Receiver") is served with a subpoena or any other form of legal process that would compel disclosure of any Confidential or Highly Confidential Information that was produced by a person or entity other than the Receiver ("Request"), unless otherwise

prohibited by law, the Receiver must so notify the Supplying Party in writing, promptly and in no event more than three business days after receiving the Request. Such notification shall include a copy of the Request.

(a) The Receiver shall promptly inform the party who made the Request (“Requesting Party”) in writing that some or all the requested material is the subject of this Protective Order. The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the Supplying Party an opportunity to try to protect its Confidential or Highly Confidential Information. The Supplying Party shall bear the burden and the expense of seeking protection of its Confidential or Highly Confidential Information and nothing in these provisions should be construed as authorizing or encouraging the Receiver in this Action to disobey a lawful directive from a court or from this tribunal.

(b) The obligations set forth in this paragraph remain in effect while the Receiving Party has in its possession, custody or control Confidential or Highly Confidential Information produced by the Supplying Party in this Action.

(c) Confidential or Highly Confidential Information shall not be provided or disclosed to any third party in response to a request under the Utah Government Records Access and Management Act, or any similar federal, state or municipal law except as laid out below, for a period of 21 days in order to permit the Supplying Party an opportunity to seek relief from the Presiding Officer or Administrative Law Judge. If the Division receives such a request, it shall (1) inform the Requesting Party that the requested materials are exempt from disclosure, that the Division is barred by this Order from disclosing them and, if necessary, provide a

copy of this Protective Order to the Requesting Party, and (2) promptly inform the Supplying Party that the request has been made, identifying the name of the Requesting Party, and the particular materials sought. The restrictions in this paragraph shall not apply to materials that (1) the Supplying Party expressly consents in writing to disclose; (2) the Administrative Law Judge, the MDL Court, or the Special Master has determined by order to have been improperly designated as Confidential or Highly Confidential Information. Nothing in this Order shall be deemed to (1) foreclose any Party from arguing that Confidential or Highly Confidential Information is not a public record for purposes of the Utah Government Records Access and Management Act; (2) prevent any Party from claiming any applicable exemption to the Utah Government Records Access and Management Act; or (3) limit any arguments that a Party may make as to why Confidential or Highly Confidential Information is exempt from disclosure.

#### **Changes in Designation of Information**

31. If a Party through inadvertence produces any Confidential Information or Highly Confidential Information without labeling or marking or otherwise designating it as such in accordance with the provisions of this Protective Order, the Supplying Party may give written notice to the Receiving Party that the document or thing produced is deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and should be treated as such in accordance with the provisions of this Protective Order, and provide replacement media, images, and any associated production information to conform the document to the appropriate designation and facilitate use of the revised designation in the production.

(a) The Receiving Party must treat such documents and things with the noticed level of protection from the date such notice is received. Disclosure, prior to the receipt of such notice of such information, to persons not authorized to receive such information shall not be deemed a violation of this Protective Order.

(b) Any Supplying Party may designate as Confidential or Highly Confidential Information or withdraw a Confidential or Highly Confidential Information designation from any material that it has produced; provided, however, that such re-designation shall be effective only as of the date of such re-designation. Such re-designation shall be accomplished by notifying counsel for each party in writing of such re-designation and simultaneously producing a re-designated copy of such material.

#### **Challenging Designations of Information**

32. Any Party may object to the propriety of the designation of specific material as Confidential or Highly Confidential Information by serving a written objection upon the Supplying Party's counsel. The Supplying Party or its counsel shall thereafter, within seven (7) calendar days, respond (by hand delivery or e-mail/facsimile transmission) to such objection in writing by either: (i) agreeing to remove the designation; or (ii) stating the reasons for such designation. The parties shall meet and confer regarding the designation with five (5) days of the Supplying Party's response. If the Receiving Party or the Requesting Party and the Supplying Party are unable to agree upon the terms and conditions of disclosure for the material(s) at issue, the Receiving Party may file a motion with the Administrative Law Judge. On such a motion, the Supplying Party shall have the burden of proving that the material is subject to protection or otherwise qualifies as

confidential pursuant to this Order. The material(s) in issue shall continue to be treated in the manner as designated by the Supplying Party until the Administrative Law Judge orders otherwise.

33. To the extent that any material designated as Confidential or Highly Confidential Information herein becomes publicly available other than through a violation of this or another protective order, or has its designation as Confidential or Highly Confidential Information withdrawn or judicially removed in MDL 2804 or any other pending opioid related action in which Purdue is a party, the Confidential or Highly Confidential Information designation shall be deemed for purposes of this Order withdrawn from such material.

**No Waiver of Claim of Privilege.**

34. This Order shall not be construed as an agreement to produce any document or other materials, or waiver of any right to object to the production of any document or other materials, or as a waiver of any claim of an applicable privilege with regard to the production of any document or other materials.

**Termination of Action.**

35. This Order shall survive and continue in force after termination of the Action, whether by adjudicative hearing, appeal, settlement, or otherwise. Except as otherwise provided by law, all copies of Confidential and Highly Confidential Information in the possession of the Parties shall be returned to the Supplying Party or shall be destroyed at the termination of the Action. Except for PHI, which pursuant to 45 CFR 164.512 shall be returned to the covered entity or destroyed at the conclusion of this Action, Parties and their outside counsel may retain their files and their own attorney work-product concerning Confidential and Highly Confidential Information; provided, however, that any such retained materials shall be maintained in accordance with the provisions of this Protective Order.

**No Limitation of Party's Use of its own Confidential  
or Highly Confidential Information.**

36. Nothing in this Protective Order shall be construed to limit any Party's use of its own Confidential or Highly Confidential Information or from otherwise complying with applicable legal process requiring a Party to disclose or otherwise produce Confidential or Highly Confidential Information.

**Understanding of the Protective Order.**

37. This Agreed Protective Order sets forth the entire understanding of the Parties regarding confidentiality of information provided in connection with the discovery in this Action. Any amendments to this Agreed Protective Order must be in writing, signed by each of the Parties, and approved by the Administrative Law Judge.

**Modification**

38. Any party may Petition the Administrative Law Judge for a modification of this Order.

**Governing Law.**

39. This Agreed Protective Order shall be construed under the laws of the State of Utah.

So Ordered this 3<sup>rd</sup> day of May, 2019



\_\_\_\_\_  
Bruce L. Dibb, Administrative Law Judge



**ATTACHMENT A**

**BEFORE THE DIVISION OF CONSUMER PROTECTION  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

**IN THE MATTER OF:**

**PURDUE PHARMA L.P., a Delaware limited partnership; PURDUE PHARMA INC., a New York corporation; THE PURDUE FREDERICK COMPANY, a Delaware corporation; RICHARD SACKLER, M.D., individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named entities; and KATHE SACKLER, M.D., individually and as an owner, officer, director, member, principal, manager, and/or key employee of the above named Respondents.**

**DCP Legal File No. CP-2019-005  
DCP Case No. 107102**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Agreed Protective Order entered in the above-captioned action on [DATE], and attached hereto, and understands the terms of the Agreed Protective Order. The undersigned submits to the jurisdiction of the Utah Department of Commerce Administrative Law Judge in matters relating to the Agreed Protective Order and understands that the terms of the Agreed Protective Order obligate him/her to use materials designated as Confidential or Highly Confidential Information only in accordance with the Agreed Protective Order and not to disclose any such Confidential or Highly Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Agreed Protective Order may result in penalties of contempt of court.

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Job Title

\_\_\_\_\_  
(Address Cont.)

\_\_\_\_\_  
Employer

\_\_\_\_\_  
(City) (State)

\_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_  
Signature

17006116.1.LITIGATION



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Bruce Dobb &lt;bdobb@utah.gov&gt;

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## Purdue - Sackler: Protective Order

2 messages

**Bruce Dobb** <bdobb@utah.gov>

Fri, May 3, 2019 at 9:57 AM

To: Will.Sachse@dechert.com, "Ackerman, David" <dackerman@motleyrice.com>, Chris Parker <chrisparker@utah.gov>, "asaucer@fnlawfirm.com" <asaucer@fnlawfirm.com>, "Douglas J. Pepe" <dpepe@jha.com>, emcomber@swlaw.com, esmith@motleyrice.com, Jonathan Novak <jnovak@fnlawfirm.com>, "grb@princeyeates.com" <grb@princeyeates.com>, kmclean@agutah.gov, knichols@swlaw.com, "Saltzburg, Lisa M." <lsaltzburg@motleyrice.com>, Isinger@motleyrice.com, mccarley@fnlawfirm.com, mfarris@fnlawfirm.com, "Monaghan, Maura Kathleen" <mkmonaghan@debevoise.com>, Majed Nachawati <mn@fnlawfirm.com>, Patrick Johnson <pjohnson@ck.law>, Paul Moxely <pmoxley@ck.law>, Robert Wing <rwing@agutah.gov>, "srgittes@debevoise.com" <srgittes@debevoise.com>, Mara Leventhal <mleventhal@jha.com>, rasudulayev@jha.com, tbywater@ck.law, etanley@jha.com

Counsel:

Attached is the signed Protective Order.

Bruce Dobb, ALJ

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 **Signed AGREED PROTECTIVE ORDER UTAH - Final.pdf**  
1226K

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**Mail Delivery Subsystem** <mailer-daemon@googlemail.com>

Fri, May 3, 2019 at 9:58 AM

To: bdobb@utah.gov



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Final-Recipient: rfc822; [etanley@jha.com](mailto:etanley@jha.com)

Action: failed

Status: 5.0.0

