

ARNOLD & PORTER LLP

C.I.C.

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September 14, 2016

BY HAND DELIVERY

Medical Society of the State of New York
865 Merrick Avenue
Westbury, NY 11590

Re: United States of America, et al. v. Anthem, Inc., et al.,
Case No. 1:16-cv-01493-ABJ (D.D.C.)

To whom it may concern :

In connection with the above-captioned litigation and pursuant to Federal Rule of Civil Procedure 45, please find enclosed a Subpoena to Produce Documents, Information, or Objects.

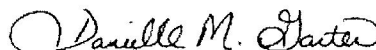
We recognize that some of the requested information may be proprietary and sensitive. Courts regularly enter protective orders protecting such information in litigations like this, and the parties are in agreement that such an order is necessary here. We have included a copy of the current Protective Order entered by the Court. Please note that the Amended Protective Order, which was entered September 12, 2016, misidentifies on page 3 the "Plaintiff States" in the U.S. v. Anthem action as Delaware, Florida, Georgia, Illinois, Iowa, Ohio, Pennsylvania, Virginia, and D.C. The Plaintiff States in the U.S. v. Anthem action are California, Colorado, Connecticut, Georgia, Iowa, Maine, Maryland, New Hampshire, New York, Tennessee, Virginia, and D.C. We are working to have this error corrected.

My colleague Kelly Schoolmeester (+1 202 942 5716; Kelly.Schoolmeester@aporter.com) is working on this matter with me. Please let us know as soon as possible when a convenient time would be to discuss the Subpoena, so that we may work constructively with you to limit your burden and fashion a timely response.

The Subpoena includes the address where you have been asked to produce the documents. If it is convenient for you, please send the production to my attention at this address. For documents that are stored electronically (or that you scan), please produce them in their native format (e.g., Excel, Word, or PowerPoint), as PDFs, or in another reasonably usable standard format (e.g., TIFFs with text and load files). If you prefer to transmit documents electronically, we can set up a secure file-transfer protocol ("FTP") site to allow the electronic transfer of records to us.

We are prepared to take all reasonable steps to ensure that no undue burden is placed upon you. Please do not hesitate to contact us if you have any questions or wish to discuss the requests.

Sincerely,



Danielle M. Garten

Enclosure

UNITED STATES DISTRICT COURT

for the
District of Columbia

United States, et al.

Plaintiff

v.

Anthem, Inc. and Cigna Corp.

Defendant

Civil Action No. 1:16-cv-01493

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Medical Society of the State of New York, 865 Merrick Avenue, Westbury, NY 11590

(Name of person to whom this subpoena is directed)

☒ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

SEE SCHEDULE "A"

Place: Arnold & Porter LLP, ATTN: Danielle Garten
399 Park Avenue
New York, NY 10022

Date and Time: September 28, 2016, 5 PM Eastern
Time

☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/14/2016

CLERK OF COURT

OR

Danielle M. Garten

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Anthem, Inc., who issues or requests this subpoena, are:

Danielle M. Garten, Arnold & Porter LLP, 601 Massachusetts Ave, NW, Washington, DC 20001,
danielle.garten@aporter.com, (202) 942-5072

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:16-cv-01493

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

▢ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

▢ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Schedule "A"

DEFINITIONS AND INSTRUCTIONS

1. "Document" means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that can be stored in any medium, including electronically stored information, from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. Unless otherwise indicated, Excel, PowerPoint and database compilations should be produced in native-file format, and all other electronically stored information may be produced as native or Tiff files with text and load files.

2. "You" and "Your" mean the party responding to this Subpoena, its subsidiaries and affiliates, and its employees, commissioners, attorneys, accountants, economists, staff, consultants, experts, agents and representatives, and includes any third-party representatives or agents, wherever located.

3. The time period for each Request is January 1, 2014 to the present.

DOCUMENT REQUESTS

1. All surveys concerning the merger between Anthem and Cigna ("Anthem-Cigna Merger") or the merger between Aetna and Humana ("Aetna-Humana Merger"), including the following:

- a. all surveys in the form that they were distributed to potential respondents, including all questions in each of the surveys, all prefaces, instructions or other text accompanying each question, all multiple choice or other potential responses that were provided with each question, and documents sufficient to show the date on which each survey was distributed and the due date for responses to each survey;
- b. separately for each survey, documents sufficient to show who drafted such survey, all documents relating to the drafting of such survey, all drafts of such survey, all questions that were considered but not included in such survey, and all multiple choice or other potential responses to any question that were considered but not included in such survey, including all documents showing or describing why a particular question or potential response was included or not included in such survey;
- c. all cover letters, emails or other communications distributing such surveys to potential respondents, describing the surveys to potential respondents, instructing potential respondents on how to complete the surveys, or describing the purpose(s) for which the surveys were distributed;
- d. separately for each survey, documents sufficient to show the number of persons or entities from which responses were solicited, including whether

responses were solicited by You from persons or entities that were not members of Your organization at the time the responses were solicited;

- e. separately for each survey, documents sufficient to show the number of responses to such survey, including the number of responses to such survey that were fully completed and the number of responses that were partially completed;
- f. separately for each survey, the results of such survey, including tabulated results of such survey, and all raw data and responses used to tabulate the results of such survey;
- g. separately for each survey, all analyses that You performed to determine the margin of error or other test of statistical significance;
- h. documents sufficient to show the number of members that belong to Your organization at present and the number of members that belonged to Your organization at the time that the responses to each survey were due; and
- i. documents sufficient to show the total number of health care professionals in the state where You are located or headquartered at present, as well as the total number of health care professionals in the state where You were located or headquartered at the time that the responses to each survey were due.

2. All surveys, discussions or analyses concerning any merger or consolidation among health systems, hospitals, physicians or other providers, including the full-text of all surveys, the full raw and tabulated responses to all surveys, all Documents transmitting any such surveys to potential respondents, and all Documents assessing the responses to any such surveys.

3. All Documents that contain communications with the United States Department of Justice ("DOJ"), any other United States agency, and/or the Office of the Attorney General of any state concerning the Anthem-Cigna Merger or the Aetna-Humana Merger, or the litigation by the DOJ challenging the Anthem-Cigna Merger or the Aetna-Humana Merger.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

SEP 12 2016

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC., et al.,

Defendants.

Civil Action No. 16-1493 (ABJ)

AMENDED PROTECTIVE ORDER

The Court, upon good cause shown and in accordance with Rule 26(c)(1) of the Federal Rules of Civil Procedure, **ORDERS** as follows:

A. Definitions

(1) As used herein:

(a) "Action" means the above captioned action, including any related discovery, pre-trial, trial, post-trial, or appellate proceedings.

(b) "Confidential Information" means (i) any trade secret, confidential research, development, commercial, or competitively sensitive information, as such terms are used in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure; (ii) any transcript or other material containing such information that has not been published or otherwise made publicly available; and (iii) any "Personally Identifiable Information" or "Protected Health Information," as such terms are defined in this Order.

(c) "Defendants" means Anthem, Inc. and Cigna Corp., and their divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents (including counsel), and representatives of the foregoing.

(d) “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

(e) “Document” means documents or electronically stored information as defined in Rule 34(a) of the Federal Rules of Civil Procedure.

(f) “Including” means including, but not limited to.

(g) “Investigation” means the pre-Complaint investigation of the Agreement and Plan of Merger among Anthem and Cigna dated July 23, 2015, and the Agreement and Plan of Merger among Aetna Inc. and Humana Inc. dated July 2, 2015.

(h) “Investigation Materials” means non-privileged correspondence, documents, data, written information or statements, transcripts of testimony, declarations (including drafts), affidavits (including drafts), Civil Investigation demands, informal requests for information, and other materials that:

- (i) were exchanged between any Defendant, or affiliated person or entity, and any Plaintiff, either voluntarily or under compulsory process, during, and in connection with the Investigation; or
- (ii) were exchanged between any counsel for a Party who provided legal services to the Party in connection with the Investigation and any non-party not having an attorney-client or common-interest relationship with the Party (*e.g.*, experts, consultants, counsel for co-Defendants, and counsel for states’ attorneys general), either voluntarily during and in connection with the Investigation or in response to any request issued during and in connection with the Investigation, where such communications were made for the purposes of the Investigation.

(i) “Litigation Materials” means non-privileged documents, written information, or other materials that (i) any Protected Person provides to any Party, either voluntarily or under compulsory process, in connection with this Action; (ii) constitute any communication between any Party and any non-party or Protected Person in connection with this Action; (iii) any Defendant, or affiliated person or entity, provides to any Plaintiff, either

voluntarily or under compulsory process, in connection with this Action; or (iv) any Plaintiff provides to any Defendant in connection with this Action.

(j) “Outside Counsel of Record” means the firms or attorneys representing a Defendant in this Action.

(k) “Party” means any Plaintiff or any Defendant in this Action. “Parties” means collectively the Plaintiffs and Defendants in this Action.

(l) “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or business entity.

(m) “Plaintiff” means the United States of America and all of its employees, agents, and representatives, and the Plaintiff States.

(n) “Plaintiff States” means the States of Delaware, Florida, Georgia, Illinois, Iowa, and Ohio, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia, their respective Attorneys General, and other authorized representatives of their respective Attorneys General.

(o) “Protected Person” means any Person (including a Party) that, either voluntarily or under compulsory process, has provided or provides (i) Investigation Materials in connection with the Investigation, or (ii) Litigation Materials in connection with this Action.

(p) “Personally Identifiable Information” or “PII” means any information about an individual, including education, financial transactions, medical history, criminal history, employment history, or information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, date and place of birth, mother’s maiden name, biometric records, including any other personal information which is linked or linkable to a specific individual.

(q) “Protected Health Information” or “PHI,” as defined in 45 C.F.R. § 160.103, means individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. The term does not include individually identifiable health information (i) in education records covered by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; (ii) in records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); (iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

(r) “Individually Identifiable Health Information,” as defined in 45 C.F.R. § 160.103, is a subset of health information, including demographic information collected from an individual, and (i) created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (1) that identifies the individual; or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

B. Notice

(1) Within three business days after the Court’s entry of this Order, the applicable Party must give notice of this Order to each Protected Person (or, if represented by counsel, the Protected Person’s counsel) that provided Investigation Materials to that Party and who provided an email address, facsimile number, or physical address. Notice must be given by sending a copy of this Order by email, facsimile, or overnight delivery.

(2) If a Protected Person determines that this Order does not adequately protect its Confidential Information, it may, after meeting and conferring with the Parties within 10

calendar days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a Protected Person seeks additional protection from the Court, the information for which additional protection has been sought will not be provided to other Persons until the Protected Party and the Parties have agreed or the Court has ruled on the Protected Party's motion.

(3) **Confidential Health Information.** The Parties acknowledge that information produced in the Investigations and in discovery in this litigation, regardless of its designation under this Order, may contain personal and health information that may be subject to the protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the applicable requirements of the Standards for Privacy of Individually Identifiable Health Information and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64, HIPAA Privacy Regulations), and state regulations protecting the confidentiality of individually identifiable personal and health information. The Parties and all Persons who sign the agreement set forth in Appendix A hereto agree to take all measures necessary to comply with the requirements of these laws and any other applicable laws governing the privacy of personal and health information.

C. Designation of Confidential Information

(1) **Right to Confidential Designation.** A Protected Person may designate as "Confidential Information" any Investigation Materials or Litigation Materials, to the extent such information constitutes Confidential Information as defined in subparagraph A(1)(b) of this Order. Such designations constitute a representation to the Court that the Protected Person (and counsel, if any) in good faith believes that the Investigation Materials or Litigation Materials so designated constitute Confidential Information.

In addition, in the event that a Party produces information of the other Party and does not designate it as Confidential or a non-Party produces information of a Party and does not designate it as Confidential, then such Party has the right to object and designate the information as Confidential so long as such Party has a good faith belief that the information constitutes Confidential Information. In such an event, the designated information must be treated in accordance with its Confidential Information designation in the same manner as if the producing Party or producing non-Party had designated the information as Confidential.

(2) **Waiver.** Any production of documents, information, transcripts of testimony, or other materials not designated as Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated as Confidential Information. However, the disclosure of any information for which disclosure was proper at the time disclosed will not be deemed improper regardless of any such subsequent confidentiality designation.

(3) **Inadvertent Non-Designation.** If at any time before the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any documents, testimony, or other materials that the Person previously produced during discovery in this Action, it may so designate such documents, testimony, or other materials by notifying the Parties in writing. After receiving such notice, the Parties must thereafter treat the newly designated information as Confidential Information in accordance with the Protected Person's new designation under the terms of this Order.

(4) **Inadvertent Disclosure.** In the event of a disclosure of any Confidential Information to any Persons not authorized to receive such disclosure under this Order, the Party responsible for having made the disclosure must promptly notify the Protected Person whose

material has been disclosed and provide to such Protected Person all known relevant information concerning the nature and circumstances of the disclosure.

The disclosing Party must also promptly take all reasonable measures to retrieve the improperly disclosed material and to ensure that no further or greater unauthorized disclosure or use thereof is made. Unauthorized or inadvertent disclosure does not change the confidential status of any disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

(5) **Designation of Investigation Materials.** Investigation Materials submitted by a Protected Person, and any other materials that are entitled to confidentiality under the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), the Hart–Scott–Rodino Antitrust Improvement Act, 15 U.S.C. § 18a(h), or under any other federal or state statute, regulation, or precedent concerning documents in the possession of any Plaintiff, and any information taken from any portion of such document, however that information is recorded or transmitted, will be treated in the first instance as Confidential Information under this Order. Such material may be disclosed only in accordance with the procedures set forth in this Order. The confidentiality of such materials may later be challenged under the provisions of section D below.

(6) **Designation of Litigation Materials.** The following procedures govern the process for Protected Persons to designate as Confidential Information any information that they disclose in this Action after this Order is entered:

(a) *Copy of order.* When discovery is sought from a non-party in this Action after entry of this Order, a copy of this Order must accompany the discovery request.

(b) *Deposition testimony.* Within five business days of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent.

All transcripts of depositions taken in this Action after entry of this Order will be treated as Confidential Information in their entirety until the date 10 business days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable).

Within 10 business days following receipt of the final transcript, the deponent may designate as Confidential Information any portion of the deposition transcript, by pages and lines, and any deposition exhibits provided by the deponent or the deponent's employer. To be effective, these designations must be provided in writing to Plaintiffs' and Defendants' counsel. Any portion of the transcript or exhibits not so designated will not be treated as Confidential Information, despite any prior designation of confidentiality.

When a Party is entitled under this Order to question a deponent about a document or information that has been designated by a different Protected Person as Confidential Information, the Party that asked such questions must designate as Confidential the portion of the transcript relating to such Confidential Information.

Nothing in subsection C(6)(b) shall be interpreted to expand the categories of individuals entitled to possess or review Confidential Information under section E of the Protective Order.

(c) *Documents.* A Protected Person who designates as Confidential Information any document that they produced in this Action must stamp or otherwise mark each page containing Confidential Information with the designation "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" in a manner that will not interfere with legibility or audibility. If the entire document is not Confidential Information, the Protected Person making the designation must stamp or label only those pages that contain Confidential Information.

(d) *Electronic Documents and Data.* Where a Protected Person produces

electronic files and documents in native electronic format, the electronic files and documents must be designated by the Protected Person for protection under this Order by appending to the file names or designators information indicating whether the file contains Confidential Information, or by any other reasonable method for appropriately designating such information produced in electronic format, including by making such designations in reasonably accessible metadata associated with the files.

When Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” designation may be placed on the disk or other medium. When electronic files or documents in native form are printed for use at deposition, in a court proceeding, or for provision in printed form to any person described in subparagraph E(1)(c), the Party printing the electronic files or documents must affix a legend to the printed document saying “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” and include the production number and designation associated with the native file, or use another reasonable method for appropriately designating such information.

D. Challenges to Confidential Designation

(1) Any Party who objects to any designation of confidentiality may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and all Parties stating with particularity the grounds for the objection. All materials objected to will continue to be treated as Confidential Information pending resolution of the dispute. If the objecting Party and the Protected Person cannot reach agreement on the objection within ten business days of the Party’s written notice, either the objecting Party or the Protected Person may raise the dispute with the Court. The producing Party or non-Party bears the burden

of persuading the Court that the material is in fact Confidential Information.

(2) While any dispute concerning the designation of confidentiality is pending before the Court, the designated information must be treated in accordance with its Confidential Information designation under this Order until the Court rules on the motion. If the Protected Person fails to move the Court in accordance with this paragraph, or if the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation will be considered rescinded. The Parties thereafter are not required to treat the information as Confidential Information under this Order.

(3) The Parties' entry into this Order does not preclude or prejudice either the Protected Person or the objecting Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

E. Permitted Disclosure of Confidential Information

(1) Confidential Information may be disclosed only to the following Persons:

(a) the Court and all Persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) Plaintiffs' attorneys, paralegals and other professional personnel (including support and IT staff), agents, or independent contractors retained by Plaintiffs to assist in this Action, whose functions require access to the information;

(c) Outside Counsel of Record for Defendants including such Outside Counsel's attorneys, paralegals, and other professional personnel (including support and IT staff), agents, or independent contractors retained by the Defendants to assist in this Action, whose functions require access to the information. Defendants may file motions with the Special

Master seeking modification of this provision to share Confidential Information with a very small number of specified in-house attorneys, so long as those attorneys are not involved in Defendants' competitive decision-making. Should a Defendant file such a motion, then Defendant shall contemporaneously notify the Protected Person whose Confidential Information is the subject of such motion, and that Protected Person shall be afforded all rights as set forth in Paragraphs 2-5 of the Order Appointing the Special Master [Dkt. 53], including but not limited to the right to respond to such a motion and be heard at oral argument before the Special Master (if any);

(d) any person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action;

(e) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action;

(f) outside trial consultants (including graphics consultants) retained by a Party to assist in prosecuting or defending this Action;

(g) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(h) authors, addressees, and recipients of particular information designated as Confidential Information solely to the extent they have previously had lawful access to the particular Confidential Information that was disclosed or is to be disclosed; and

(i) persons who counsel for Plaintiffs or Defendants believe in good faith previously received or had access to the document, unless the person indicates that he or she did not have access to the document.

(2) Before any information designated as Confidential Information may be disclosed to any Person described in subparagraphs E(1)(d)–(f) of this Order, the Person must first read this Order or must have otherwise been instructed on his or her obligations under the Order by this Court or counsel for a Party, and must have executed the Agreement Concerning Confidentiality attached hereto as Appendix A. Counsel for the Party making the disclosure must retain a copy of such executed agreements for a period of at least one year following the final resolution of this Action.

(3) Each Person described in Paragraph E(1) of this Order who receives Confidential Information may not disclose that Confidential Information to any other Person, except as provided in this Order.

(4) Recipients of Confidential Information under this Order may use such material solely for the prosecution and defense of this Action and not for any business, commercial, or competitive purpose, or in any other litigation proceeding.

(5) In the event that any Party seeks to use any third-party Confidential Information in any deposition taken with respect to this Action, such Information shall not be shared with anyone other than those persons identified in paragraph E(1) of the Protective Order. Party representatives and/or in-house counsel for the Parties may not attend that portion of the depositions, and will not be provided copies of the transcripts or exhibits for such portions of the depositions.

(6) Nothing in this Order:

- (a) limits a Protected Person's use or disclosure of its own Confidential Information;
- (b) prevents disclosure of Confidential Information by any party to any current employee of the Protected Person that designated the Confidential Information;

(c) prevents disclosure of Confidential Information by any Party with the express written consent of the Protected Person that designated the material as Confidential Information

(d) prevents disclosure by a Party of Confidential Information that is (i) publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt in discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) produced in accordance with an order of this Court

(e) prevents the United States, subject to taking appropriate steps to preserve the further confidentiality of such information, from retaining or disclosing Confidential Information (i) in the course of any other legal proceedings in which the United States is a party; to secure compliance with a Final Judgment that is entered in this Action; or (iii) for law-enforcement purposes, or as may be required by law; or

(f) prevents the United States' retention or use or disclosure of Confidential Information outside the context of this Action to the extent permitted by applicable law or regulation governing such pre-complaint discovery, including the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14, or as required by law, court order, or regulation.

F. Use of Information Designated Confidential

If any documents, testimony, or other materials designated under this Order as Confidential Information are included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file such material must comply with this Court's Local Civil Rule 5.1(h). Nothing in this Order restricts the Parties or any interested member of the public

from challenging the filing of any Confidential Information under seal. Upon receipt of an objection or challenge to the filing of a Protected Person's Confidential Information under seal, the Party that filed the Confidential Information under seal shall notify the Protected Person of such objection or challenge within three business days of the receipt of such objection or challenge.

G. Disclosure of Documents Containing PII and PHI

Any PII or PHI produced to any Party, whether during the course of the Investigation or this Action, is considered Confidential Information under this Order without the need for any Protected Person or Party to designate it as such.

H. Treatment of Confidential Information at Trial

The disclosure of Confidential Information at trial will be governed by a separate Court order.

I. Procedures upon Termination of This Action

(1) The obligations imposed by this Order survive the termination of this Action unless the Court, which retains jurisdiction to resolve any disputes arising out of this Order, orders otherwise. Within 90 days after receiving notice of the entry of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must either (i) return the material and all copies thereof to the Protected Person (or the Protected Person's counsel if represented by counsel) that produced it; or (ii) destroy or delete the Confidential Information such that it cannot be reassembled, reconstructed, or used in any way.

(2) Notwithstanding the above Paragraph (I)(1), Plaintiffs' attorneys and Outside Counsel of Record who were permitted access to Confidential Information pursuant to Section

E(1)(c) are entitled to retain Confidential Information contained in court papers, deposition and trial transcripts and exhibits, and work product, provided that Plaintiffs' attorneys and Outside Counsel of Record do not disclose the portions of court papers, deposition transcripts, exhibits, or work product containing information designated as Confidential Information to any Person except under Court order or agreement with the Protected Person that produced the Confidential Information or as otherwise permitted in this Order.

(3) All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph. Nothing in this Paragraph, however, expands or restricts the rights of the Parties under Paragraphs (E)(4) or (E)(5) of this Order.

J. Right to Seek Modification

Nothing in this Order limits any Person, including members of the public, Party, or Protected Person from seeking further or additional protections of any of its materials or modification of this Order upon motion duly made under the rules of this Court, including that certain material not be produced at all or is not admissible evidence in this Action or any other proceeding.

K. The Privacy Act

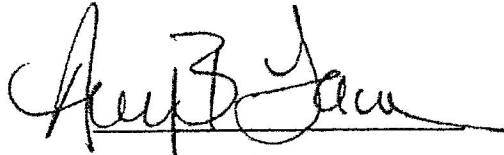
Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a(b)(11).

L. Persons Bound by This Order

This Order is binding on the Parties to this Action, their attorneys, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates,

employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Amy B. Jackson", written over a horizontal line.

AMY BERMAN JACKSON
United States District Judge

DATE: September 12, 2016

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC., et al.,

Defendants.

Civil Action No. 16-1493 (ABJ)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____ by _____.

I hereby certify that:

1. I have read the Stipulated Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Stipulated Protective Order entered in the above-captioned action and agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Stipulated Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Stipulated Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.
5. I make this certification this _____ day of _____, 20____.

SIGNATURE

September 27, 2016

Via Overnight Mail

Attn: Danielle Garten, Esq.
Arnold & Porter, LLP.
399 Park Avenue
New York, New York 10022

Re: Subpoena of Medical Society of the State of New York in the United States of America et al. v. Anthem, Inc. et al.

Dear Ms. Garten:

I represent the Medical Society of the State of New York (MSSNY) in connection with the subpoena that you served. MSSNY has searched its documents and records, and please find the documents that you have requested.

Question 1: Please find copies of the surveys that were distributed. We believe these documents respond to Question 1 a-i. MSSNY membership information is enclosed. However, MSSNY does not have data regarding the number of health care professionals who are not members of MSSNY.

Question 2: Unless you narrow the scope of Question 2, MSSNY will need additional time to search its documents. MSSNY did not conduct any other survey pertaining to a merger or consolidation. However, Question 2 is very broad, and goes beyond requesting information pertaining to a survey. Accordingly, in order to search records pertaining to "any discussions" or "analyses" concerning "any merger or consolidation among health systems, hospitals, physicians or other providers", MSSNY would need an extension of time to conduct a search.

Question 3: MSSNY communicated with the Office of the New York State Attorney General. Documents pertaining to the communication are enclosed.

As agreed in our telephone conversation on September 12, 2016 and discussed in my email to you the same date, in cases where a physician provided comments in the survey and also provided name or other personal information, the name or personally identifying information has been redacted. The redactions are minimal, as the comments are provided verbatim.

KERN AUGUSTINE CONROY
& SCHOPPMANN, P.C.


Attorneys at Law

Page 2

Please let me know if you have any questions.

Sincerely,

KERN AUGUSTINE, P.C.

By: 
Donald R. Moy
dmoy@drlaw.com
DrLaw.com

DRM/ar
Enclosures

Philip Schuh

From: Moe Auster <mauster@mssny.org>
Sent: Friday, September 30, 2016 1:17 PM
To: Don Moy; Vozza, David; Philip Schuh
Subject: FW: United States v. Anthem/Cigna

FYI

From: Leonard Nelson [<mailto:Leonard.Nelson@ama-assn.org>]
Sent: Friday, September 30, 2016 12:59 PM
To: Layne Gakos; Ken Ferrucci; Matt Katz (mkatz@csms.org); James Potter; Donald Palmisano; Kimberly Ramseur; 'Andrew MacLean'; Gordon Smith (gsmith@mainemed.com); Peter Michaud; Tom Holloway; Jeff Howell; Alfred Gilchrist; Susan Koontz; Lauren Bates-Rowe; Moe Auster
Cc: Michaela Sternstein; Wes Cleveland; Jon Ekdahl; Henry Allen; Julie Reed; Stacy Cook (SCook@ismanet.org); Long Do (LDo@cmanet.org); Francisco Silva (fsilva@cmanet.org); George Cox; Rory Skaggs (RSkaggs@bsflp.com)
Subject: United States v. Anthem/Cigna

Dear Medical Societies of CT, NH, GA, ME, MO, CO, IN, CA, VA and NY:

This will bring you up to speed on the lingering issues regarding the subpoenas. First, the insurance companies agreed the medical societies could redact information about survey respondents' cities and zip codes. We achieved this result only after numerous e-mails and highly charged debates with opposing counsel (kudos to Rory Skaggs for seeing this through).

Second, there has been, to me, surprisingly little coordination between the attorneys for Anthem/Cigna and the attorneys for Aetna/Humana. Particularly, there has been little effort to coordinate discovery efforts. Theoretically, we could all receive subpoenas next week from the Aetna/Humana attorneys. I doubt this will happen, as the DOJ has not alleged a physician monopsony claim against Aetna/Humana, but it is possible.

Third, the insurance companies have agreed that any information produced by the medical societies and designated as Confidential Information will be examined by outside counsel only and will not be shared with Anthem or Cigna.

Fourth, however, the insurance companies have insisted that "any fields that were left blank by the respondent should remain blank, rather than being redacted." I am not exactly sure what this means, but I nevertheless pass it along.

If you have any questions about this, please direct them to me. While the assistance of Boies Schiller & Flexner has been invaluable, we want to conserve expense.



Leonard A. Nelson
Senior Division Counsel
AMA Plaza
330 N. Wabash Ave., Suite 39300
Chicago, IL 60611-5885

Philip Schuh

From: Donald R. Moy <DMoy@drlaw.com>
Sent: Tuesday, September 27, 2016 1:21 PM
To: Garten, Danielle M.
Cc: Schoolmeester, Kelly
Subject: RE: U.S. v. Anthem- Subpoena

Ms. Garten:

MSSNY is sending a package to in response to the subpoena, by overnight mail to your attention , to the address identified in the subpoena:

Arnold & Porter, LLP
Attn: Danielle Garten, Esq.
399 Park Avenue
New York, N.Y. 10022

Please let me know if you have any questions.

Sincerely,

Donald R. Moy

Kern Augustine, P.C.

☎ : 800.445.0954 || 📠 : 800.941.8287 || ✉ : DMoy@drlaw.com

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From: Garten, Danielle M. [<mailto:Danielle.Garten@APORTER.COM>]
Sent: Tuesday, September 20, 2016 2:43 PM
To: Donald R. Moy
Cc: Schoolmeester, Kelly; Garten, Danielle M.
Subject: U.S. v. Anthem- Subpoena

Mr. Moy,

Thank you for taking the time to speak with me today. As discussed, we would appreciate a rolling production of materials from the Medical Society of the State of New York, with the following requests prioritized for production by the operative due date of September 28:

Request 1:

- (a) All surveys distributed to potential respondents concerning the Anthem/Cigna merger
- (d) Documents showing the number of persons or entities from which responses were solicited
- (e) Documents showing the number of responses received to the survey
- (f) The results of the survey (raw data and responses, as well as any tabulated results)
- (c) A copy of the standard form used to transmit the surveys

Request 2:

Any other *surveys* concerning any merger or consolidation among health systems, hospitals, physicians, or other providers, along with the results of those surveys and a sample cover letter accompanying the survey.

Request 3:

All documents containing communications with the Department of Justice, any other United States agency, and/or the Office of the Attorney General of any state concerning the Anthem/Cigna merger or the Aetna/Humana merger, or the litigation concerning either of those mergers.

Hopefully these limitations will assist your client in gathering materials more expeditiously and with less burden. Please let me know if you would like to discuss further or have any questions.

Warm regards,
Danielle Garten

Danielle M. Garten
Arnold & Porter LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743

Office: +1 202.942.5072
danielle.garten@aporter.com
www.arnoldporter.com

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<http://www.arnoldporter.com>