

CAUSE NO. D-202027

JESSE EUGENE KEMP,

Plaintiff,

vs.

PURE PLAY ORTHOPAEDICS; JB
ORTHOPAEDICS; CHAD CROSS;
RONALD E. TALBERT, M.D.;
BEAUMONT BONE & JOINT
INSTITUTE, P.A.; BAPTIST HOSPITALS
OF SOUTHEAST TEXAS; SMITH &
NEPHEW, CONSOLIDATED, INC.;
SMITH & NEPHEW, INC.; MICHAEL
TAYLOR; JB ORTHOPEDIC
APPLIANCES, LLC; and PURE PLAY
ORTHOPAEDICS SALES, INC.

Defendants.

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136th JUDICIAL DISTRICT

AMENDED CONFIDENTIALITY ORDER

In order to preserve the rights of litigants in these proceedings to claim confidentiality of certain documents to be produced in this litigation by the parties, the Court orders as follows:

This Order replaces the Protective Order this Court entered on October 19, 2018. That Order was entered before Smith & Nephew, Inc. was a party. This Order applies to all parties, including Smith & Nephew, Inc.

1. Terms.

- a. “Confidential Information” means information that constitutes a trade secret or reveals confidential research, development, or commercial information. Confidential Information does not include information that has been disclosed in the public domain.
- b. “Protected Documents” means materials, documents or discovery responses containing Confidential Information disclosed or produced by any party in this litigation.
- c. “Confidential Material” means any document(s) claimed pursuant to Section 2(a) or (b) of this Order and any Confidential Information claimed to be contained therein, to the extent allowed by this Order.
- d. “Data Subject” means “Any natural person who is a citizen of the United Kingdom

or other countries in the European Union or other jurisdictions that have been deemed by the European Union to have equivalent, adequate data protection laws, who is identified or identifiable—directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identify of that natural person—in a document in this litigation.

- e. “Personal Data,” as defined by GDPR Article 4(1) and for purposes of this Order, means any information relating to an identified or identifiable Data Subject. Personal Data shall include:
 - 1) Customer names;
 - 2) Clinical studies;
 - 3) Information concerning competitors;
 - 4) Personnel records and information;
 - 5) Financial information not publicly filed with any federal or state regulatory authorities;
 - 6) Information submitted to any governmental or regulatory agency, which information is exempt from public disclosures; and
 - 7) Any other personal data as defined by the Foreign Data Protection Laws applicable to the Data Subject.

2. **Designation.**

- a. A document (or portion of a document) that a party determines in good faith to be a Protected Document may be claimed as confidential by (1) stamping the word “CONFIDENTIAL” on the document, or (2) using any other reasonable method agreed to by the parties. Such stamping shall not obscure any writings on the documents.
- b. A party may, on the record of a deposition or by written notice to opposing counsel not later than seven days after receipt of a hard copy of the deposition transcript from the court reporter, claim any portion(s) of the deposition transcript or a deposition exhibit as “CONFIDENTIAL” based on a good faith determination that any portions so claimed constitute a Protected Document. To the extent possible, any portions so claimed shall be transcribed separately and marked by the court reporter as “CONFIDENTIAL.”
- c. By claiming a document Confidential Material pursuant to Section 2(a) or 2(b), a party represents that it has made a bona fide, good faith determination that the document does in fact, contain Confidential Information.
- d. The parties agree that a “CONFIDENTIAL” designation for all documents containing Personal Data is proper under this Amended Protective Order. Smith & Nephew, Inc. represents that it has already provided notice to all Data Subjects. Personal Data should only be redacted if redaction is proper under the Texas Rules of Civil Procedure.

3. Challenge to Claim.

- a. Any party may challenge a claim made under Section 2(a), 2(b), or 2(d) by written notice of its objection to counsel for the claiming party or non-party. Challenge to a claim made under Section 2(b) may be made either upon the record of the deposition or as provided in the preceding sentence.
- b. In the event a claim is challenged, the party requesting Confidential treatment will move for an appropriate ruling from the Court. The material shall be treated as Confidential Material until the expiration of twenty days if no motion is made by the party requesting confidential treatment (at which time the material shall no longer be treated as Confidential Material), or, if a motion is made, until the Court rules.
- c. A party shall not be obligated to challenge the propriety of the designation of documents as Confidential Materials at the time of designation, and failure to do so shall not preclude a subsequent challenge to the designation.

4. Use of Confidential Material Limited.

Confidential Material shall be treated as confidential and used (1) by counsel in this case solely for the litigation of this case or (2) by counsel in other actions arising out of the same or similar set of facts, transactions, or occurrences that are asserted in the petition filed in this case solely for the litigation of such actions. Except as set forth in Section 6, Confidential Material shall not be revealed without the express written consent of the party claiming same as Confidential Material or upon written order of the Court.

5. Not Applicable at Trial.

This Order shall not apply to the disclosure of Protected Documents or the information contained therein at the time of trial, through the receipt of Protected Documents into evidence or through the testimony of witnesses. The closure of trial proceedings and sealing of the record of a trial involve considerations not presently before the Court. These issues may be taken up as a separate matter upon the motion of any party in compliance with Rule 76a TRCP.

6. Permitted Disclosures.

Confidential Material may be shown, disseminated, or disclosed only to the following persons:

- a. All attorneys of record for the parties in this case, including the members of their respective law firms, and their employees assisting in the preparation of this case for trial;
- b. Experts and consultants retained by the parties for the preparation or trial of this case;
- c. Translators privately retained by the parties for the preparation or trial of this case;
- d. The Court, its staff, court reporters, deposition videographers, mediators, court-appointed translators, witnesses, and the jury in this case;
- e. Any attorney representing a party in other present or future cases in any court in

the United States against the party asserting confidentiality alleging claims arising out of the same or similar set of facts, transactions, or occurrences that are asserted in the petition filed in this case. Prior to any disclosure of Confidential Material to any attorney pursuant to this paragraph 6(e), the attorney will execute the attached Exhibit "A." If counsel for Smith & Nephew asks whether Confidential Information, Confidential Material has been shared with an attorney pursuant to this paragraph, counsel for Plaintiff will disclose such attorney within seven (7) days.

7. Agreement by Recipients.

Before being given access to Confidential Material, each person described in paragraph 6(b), (c) or (e), shall be advised of the terms of this Order, shall be given a copy of this Order, and shall sign a copy of **Exhibit "A."** Any person provided Confidential Material pursuant to Paragraph 6 agrees not to share it with any other person or entity.

8. Retention of Jurisdiction by Court.

This Court shall retain jurisdiction to make amendments, modifications, and additions to this Order as the Court may, from time to time, deem appropriate, as well as to resolve any disputes. As to any person who is provided Confidential Material pursuant to Paragraph 6, a breach of this Order and such person's agreement to it may be enforced by this Court or any court of competent jurisdiction.

9. Production Not a Waiver.

The Production of Confidential Material pursuant to this Order is not intended to constitute a waiver of any privilege or right to claim the trade secret or confidential status of the documents, materials, or information produced.

10. Public Health and Safety.

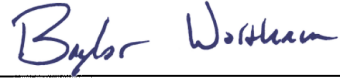
Nothing in this Order is intended to prevent any party from raising with the Court any concern that the non-disclosure of certain Confidential Material may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office.

11. Any documents used in this case can be used in any case involving Smith & Nephew metal-on-metal hip implants, in which Plaintiff's counsel is counsel of record, subject to the confidentiality and other restrictions of this Order. Counsel for the parties agree to enter any appropriate order that may be necessary to effectuate the terms of this agreement in other cases.

This Order does not seal Court Records in this case and is only intended to facilitate the prompt production of discovery materials. Any motion to seal Court Records must strictly adhere to Rule 76a, TRCP. No determination is being made by the Court at this time that these documents are confidential or entitled to protection. Such issues are reserved and will be ruled upon pursuant to this Order and any applicable notice and hearing provisions. This Order merely provides a framework for the parties to claim such materials as confidential to preserve their right to seek protection for these documents as confidential

proprietary information, and to preserve such issues for ruling until each party may prepare their appropriate arguments on these issues.

Signed this the 22nd day of November, 2019.



Judge Presiding
136th Judicial District Court

CAUSE NO. D-202027

JESSE EUGENE KEMP,

Plaintiff,

vs.

PURE PLAY ORTHOPAEDICS; JB ORTHOPAEDICS; CHAD CROSS; RONALD E. TALBERT, M.D.; BEAUMONT BONE & JOINT INSTITUTE, P.A.; BAPTIST HOSPITALS OF SOUTHEAST TEXAS; SMITH & NEPHEW, CONSOLIDATED, INC.; SMITH & NEPHEW, INC.; MICHAEL TAYLOR; JB ORTHOPEDIC APPLIANCES, LLC; and PURE PLAY ORTHOPAEDICS SALES, INC.

Defendants.

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136th JUDICIAL DISTRICT

EXHIBIT A

The undersigned states subject to the penalties of perjury:

1. I either (a) have been retained by a party to this litigation or by a party’s counsel of record to offer analysis or advice, either as an expert witness or consultant, or (b) am an attorney who, in another case, is representing a litigant against a party asserting confidentiality of discovery materials produced in the above-captioned case.
2. I have been furnished a copy of the Protective Order entered in this case restricting the use of Confidential Information.
3. I promise to abide by the Protective Order with respect to Confidential documents and information furnished to me in this litigation.
4. As a condition to receipt of Confidential documents and information in this litigation, I consent to personal jurisdiction over me in the 136th Judicial District Court, solely for the purpose of enforcing the Protective Order.

Signed: _____

Dated: _____

Printed Name

Address

City, State, Zip