

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

H. THAYNE DAVIS : Case No: 3:04cv0059
Plaintiff, : Magistrate Judge Sharon L. Ovington
v. : (By Consent of the Parties)
LIFETIME CAPITAL, INC. :
Defendant. :

**ORDER GRANTING MOTION COMPELLING RELEASE OF MEDICAL
RECORDS OF LIFETIME VIATORS AND COMPELLING PRIVACY PROTECTIONS
FOR RECORDS RELEASED (Doc. # 38)**

This matter comes before the Court on the motion (Doc. #38), of the Court-appointed Receiver for the assets of LifeTime Capital, Inc. ("LifeTime"), H. Thomas (Tom) Moran, II ("Moran" or "Receiver"), for entry of an Order directing health care providers to release records relative to the care, treatment and health of LifeTime's viators ("Medical Records"). The Court previously authorized Moran to take any and all action as he may deem necessary or prudent for the preservation, maintenance and administration of the asset portfolio of LifeTime which is comprised of viatical and life settlement policies ("Policies") and beneficial interests therein ("Receivership Assets").

The Court finds that the insured under each Policy (the "Viator") agreed to the on-going release of Medical Records by his or her medical providers at the time that the interest in the death benefit of the Policy was sold to LifeTime by the Viator. The Court further finds that in

order to maximize potential returns to LifeTime's investors, some Policies are likely to be marketed and sold by the Receiver. Because of the nature of the Policies comprising the Receivership Assets, the value of each Policy is dependent upon the health and life expectancy of the Viator insured under the Policy. Therefore, in order to determine whether to cancel, retain or to market each Policy comprising the Receivership Assets, the Receiver must obtain and review medical information from the health care providers for each Viator.

In addition, the Court finds that in order to carry out his duties, the Receiver will engage various individuals and entities to assist in determining the value of Policies and in the monitoring, servicing and marketing of the Policies and will deal with entities providing financing required for the administration and management of the Receivership Assets ("Lenders") and that those individuals and entities will require access to information contained in the acquired Medical Records. The Receiver, Lenders and Policy purchasers ("Purchasers") will also require on-going information concerning the health status and life expectancy of certain Viators in order to monitor the status of Policy investments.

The Court finds that in light of the financial situation of the Receivership Assets, time is of the essence in obtaining and reviewing Viator Medical Records and determining the appropriate disposition of the Policies.

Finally, the Court finds that under the regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 201 *et seq.*, specifically, 45 C.F.R. § 164.512(e)(1)(i), covered entities under HIPAA are to release protected health information without patient authorization pursuant to a court order issued as part of a judicial proceeding such as the present receivership matter.

IT IS THEREFORE ORDERED as follows:

1) Pursuant to 45 C.F.R. § 164.512(e)(1)(i), all health care providers who are served with a copy of this Court Order by the Receiver, or any Purchaser, are hereby ordered and compelled to release copies of all requested Medical Records for the patient/Viator so requested for the purpose of evaluating and monitoring health and predicting life expectancy, commencing from a period of time two years prior to the Viator's application for insurance for the Policy or Policies of the Viator. Copies of all requested Medical Records created subsequent to the date two-years prior to the date of application for insurance are to be immediately released upon receipt of this Order together with a written information request. Medical Records generated subsequent to any initial request pursuant to this Order shall be released upon receipt of this Order and a subsequent written request for such Medical Records.

2) The Receiver, or Purchaser, is to provide the health care provider with a signed statement setting forth the date of the patient/Viator's earliest application(s) for insurance on a Policy, or, if unknown, an approximate date based upon the date of issuance of the Policy. Any Purchaser is to provide a statement that the individual or entity is a Purchaser under the terms of this Order and, therefore, entitled to the benefit of this Order.

3) The Receiver or Purchaser will pay to the health care provider the reasonable cost of shipping and copying the requested Medical Records with the reasonable cost of copying not to exceed ten cents (\$.10) per page.

4) The Medical Records that are released pursuant to this Order may *only* be used to evaluate and monitor Viator life expectancy for the purposes of Receivership Asset financing or for valuation, marketing, monitoring and/or servicing those Policies that comprise the Receivership Assets in accordance with this Order.

5) The Receiver and Purchasers ("Records Recipient(s)") shall maintain the Medical Records in a secure location. The Records Recipient shall also take reasonable steps to ensure that only those third persons or entities directly involved in the financing, valuation, marketing, or servicing of the Policies (including, but not limited to, qualified prospective purchasers) have access to the Medical Records. The release by the Receiver of the information contained in any Medical Records acquired pursuant to this Order to such persons or entities will be done under the terms of the Medical Records Confidentiality Agreement (a sample of which is attached to Receiver's motion as Exhibit "2") under the terms of which the subsequent recipient agrees to limit access to the information to those who require the information for Policy-related functions and agrees to return any copies of the information to the Receiver when the information is no longer needed for Policy financing, due diligence, valuation, monitoring, servicing or other necessary Policy-related functions or when retention of the Medical Records is no longer required for compliance with applicable laws or regulations.

6) Finally, the Records Recipient understands and agrees that all Medical Records obtained pursuant to this Court Order shall be destroyed by the Records Recipient when the Medical Records are no longer needed for Receivership Asset financing or for Policy valuation, monitoring, servicing or other necessary Policy-related functions or in the event that the Medical Records are no longer required for complying with state or federal record keeping requirements.

June 22, 2004

s/ Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

H. THAYNE DAVIS,

Plaintiff,

vs.

LIFETIME CAPITAL, INC.,

and

DAVID W. SVETE,

Defendants.

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Case No. 3:04 CV 0059

(Judge Walter H. Rice)
(Magistrate Judge Sharon L. Ovington)

**RECEIVER'S MOTION FOR AN
ORDER DIRECTING HEALTH CARE
PROVIDERS TO PROVIDE MEDICAL
INFORMATION RELATIVE TO
LIFETIME VIATORS AND BRIEF IN
SUPPORT**

COMES NOW, H. Thomas (Tom) Moran, II ("Moran" or "Receiver"), the Court-appointed Receiver of the assets of Defendant LifeTime Capital, Inc. ("LifeTime") and moves this Court for entry of an Order directing health care providers to release records and/or other information relative to the care, treatment and health of LifeTime's Viators ("Medical Records"). In support of his Motion, Moran alleges and states as follows:

I. INTRODUCTION

The core litigation underlying this matter is a fraud and breach of contract action brought against LifeTime by the Plaintiff, H. Thayne Davis ("Davis"). Between 1996 and the early part of 2001, LifeTime was in the business of purchasing life insurance policies from terminally ill insureds (the "Viators") and selling to investors (the "LifeTime Investors") the right to receive a payment from the maturities of the policies to which they were subsequently matched. As

Receiver of LifeTime's assets, Moran is filing this motion seeking an Order directing health care providers to release, upon initial request and upon subsequent requests for updated information, the Medical Records of the Viators for the purpose of estimating and monitoring each Viator's life expectancy.

II. BACKGROUND

LifeTime's assets consist primarily of a viatical and senior settlement life insurance policy portfolio (the "Receivership Assets") comprised of approximately 190 life insurance policies (collectively, the "Policies" or each a "Policy"). The viaticals are interests in life insurance policies in which the insured, or "Viator," who had been diagnosed as being terminally ill, sold his or her interest in the death benefit proceeds to LifeTime in return for a cash payment during his or her lifetime.

LifeTime funded the purchase of the viaticals by entering into Asset Purchase Agreements or other, similar, agreements (the "Agreements") with the LifeTime Investors wherein the LifeTime Investors paid money to LifeTime in exchange for the right to receive a payment from the death benefit proceeds upon the maturities of the policies to which they were subsequently matched. As required by the Agreements, LifeTime established premium escrow accounts (the "Escrow Accounts") to create a reserve for payment of premiums on the Policies. However, the level of funding in the Escrow Accounts at the time Moran was appointed Receiver was insufficient to sustain the payment of premiums and some Policies within the portfolio were in imminent danger of lapsing. If the Policies had been allowed to lapse, the investment value thereof to LifeTime's Investors would have been irreparably diminished.

The Court, recognizing this danger, previously authorized the Receiver to enter into a Loan and Security Agreement (the "Loan Agreement") to obtain funds to pay the premiums on

the Policies. The Receiver believes that as a result of this financing, there will be sufficient funds with which to continue to pay the cost of administration and the premiums on the Policies until at least the latter part of 2004. *See* Affidavit of the Receiver, Tom Moran, attached hereto as Exhibit "1." However, it may be necessary for the Receiver to sell some of the Policies in order to continue paying premiums and to prevent the remaining Policies from lapsing. *Id.* The Loan Agreement was entered into only to protect the interests of the LifeTime Investors until a more permanent solution could be reached. *Id.* Current disposition plans include obtaining sufficient funds, through the sale of some or all of the Policies, to fund the administration of the remaining Policies and return a portion of each LifeTime Investor's investment before any lapse in the remaining Policies occurs. *Id.*

Because of the nature of the Policies comprising the Receivership Assets, the current value of each Policy -- to the LifeTime Investors, to a prospective purchaser or to an entity providing financing relating to the Receivership Assets -- is dependent upon the health and life expectancy of the Viator insured by a given Policy. Therefore, in order to evaluate the Policies, it will be necessary, from time to time, to obtain medical information from the Viators' health care providers. Exhibit 1.

II. ARGUMENTS AND AUTHORITIES

A. An Order Compelling the Production of Viator Medical Records is Necessary to the Efficient Management of the Receivership Assets.

As part and parcel of each of the transactions in which the Viators sold to LifeTime their interest in the death benefits of their life insurance policies, each Viator executed forms authorizing health care providers to release all medical records relevant to the evaluation of the Viator's health and life expectancy. Exhibit 1. The majority of the these forms were executed prior to April 14, 2001, the effective date of recent federal health information privacy regulations

implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 201 *et seq.* *Id.*

Under HIPAA regulations, "covered entities,"¹ including health care providers, may not use or disclose protected health information except: 1) as authorized by the individual who is the subject of the information; 2) as explicitly required; or 3) as permitted by the regulation. *See* 45 C.F.R. §§ 164.103 and 164.502(a). Potential penalties for release of health information in violation of HIPAA include civil and criminal fines and imprisonment. *See* 45 U.S.C §§ 1320d-5 & 1320d-6; 45 C.F.R. §§ 160.500 *et seq.*

A HIPAA-compliant medical records release authorization form contains very specific language required under the regulations. *See* 45 CFR. 164.508(c). The release forms previously executed by the Viators do not contain the required language. Exhibit 1. Therefore, health care providers, as "covered entities" under HIPAA, will be unable to release recent medical records for the Viators to the Receiver based upon the previously executed release forms.

Because of the large number of Viators insured under the Policies included in the Receivership Assets, any attempt to obtain a HIPAA-compliant medical records release form from each Viator would be very cumbersome and time-consuming. Exhibit 1. In addition, each Viator has already received the benefit of the bargain in the transaction with LifeTime – a cash payment. Therefore, there is little incentive for a Viator to sign and return an additional medical records authorization form. *Id.* In other, similar, matters, efforts by Moran to obtain new, HIPAA-compliant release forms have resulted in a low response rate of approximately twenty – five percent (25%). *Id.*

Because of the cash-flow and financing situation of the Receivership Assets as outlined

¹ "Covered Entities" under HIPAA means (1) a health plan; (2) a health care clearinghouse; and (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

above, time is of the essence in obtaining and reviewing Viator medical records and determining which Policies to retain and which to market to potential purchasers. *Id.* Therefore, the Receiver is seeking an Order from the Court directing health care providers to release to the Receiver and certain successors in interest, upon initial request and upon any subsequent requests for updated information, medical records relevant to each Viator's health and life expectancy pursuant to the provision of HIPAA allowing for such court-ordered releases of information. *See* 45 C.F.R. 164.512(e)(1)(i).

The Receiver, not a "covered entity" under HIPAA, anticipates disclosure of the acquired Viator health information relevant to life expectancy to persons engaged by the Receiver to evaluate, monitor and/or service the Policies and/or to entities from whom any financing for the preservation of Receivership Assets is sought ("Lenders") and/or disclosure to prospective Policy purchasers so that such prospective purchasers are able to evaluate the value of a given Policy. Exhibit 1. The requested Order may provide for such disclosure under the terms of the Form Confidentiality Agreement attached hereto as Exhibit "2." In addition, any purchasers of Policies will require access to updated medical information in order to monitor the status of that investment. Therefore, the Order should compel production of medical records from time to time to the subsequent holder of any Policy currently included in the Receivership Assets ("Purchaser").

B. HIPAA Provides for the Court-Ordered Release of Medical Records Without Patient Consent as Part of a Judicial Proceeding

While patient consent or authorization is typically required under HIPAA for release of medical records or information by "covered entities" such as health care providers, the HIPAA regulations specify particular uses and disclosures of health information "for which an authorization or opportunity to agree or object is not required." 45 C.F.R. § 164.512. Relevant

to the current motion is §164.512(e)(1)(i) which provides for the release of information by healthcare providers and other "covered entities" pursuant to a court order for the purpose of a judicial or administrative proceeding:

(e) Standard: Disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order;

Given the circumstances surrounding the Receivership Assets, including prior agreement by each Viator to the release of medical information and the financing and time constraints under which the Receiver is operating in his efforts to maximize the return on investment to each LifeTime Investor, an Order compelling all health care providers to release, from time to time, to the Receiver (or Purchasers) requested medical records for this judicial proceeding for the purpose of evaluating or predicting life expectancy for LifeTime's Viators should be issued. The Order should also allow the Receiver to disclose health information contained in the acquired Medical Records, under the terms of a protective confidentiality agreement, to Lenders, Purchasers, prospective Pruchasers and those engaged by the Receiver to evaluate, monitor and service the Policies.

Although not explicitly required under § 164.512(e)(i), courts ordering disclosure of medical records without patient authorization, pursuant to § 164.512, have done so under orders compelling privacy protections for the records so released according to the privacy guidelines at 45 C.F.R. § 164.512(e)(v) which provide:

For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph

(e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

For example, in *U.S. ex rel. Mary Jane Stewart v. The Louisiana Clinic*, No. Civ.A. 99-1767, 2002 WL 31819130 (E.D.La. Dec. 12, 2002), a *qui tam* action in which the relators alleged that the defendants defrauded the federal government by presenting false claims for reimbursement for medical services provided to Medicare and Medicaid participants, defendants filed a motion for a protective order, addressing the confidentiality of nonparty patients' medical records that the relators had asked the defendants to produce. In determining that release of the requested non-party information was allowable under HIPAA, the court reasoned as follows:

I find that both relators and defendants have complied with the HIPAA regulations at issue by seeking an appropriate protective order and that the court has the authority to order disclosure of nonparty patient information, subject to such a protective order, without conducting a contradictory hearing or having the parties obtain the patients' consent. All parties agree (and I strongly agree) that there is good cause for entry of a protective order concerning the medical records of nonparty patients in this case, Fed.R.Civ.P. 26(c), and that the order should at the very least comply with 45 C.F.R. § 164.512(e)(v).

2002 WL 31819130 at *5; *see also, Hutton v. City of Martinez*, 219 F.R.D. 164, 167 (N.D.Cal. 2003)(holding that HIPAA did not preclude production of defendant's medical records and worker's compensation files in response to either a discovery request, subpoena or court order, where there was a protective order which adequately safeguarded the defendant's privacy).

CONCLUSION

WHEREFORE, premises considered, the Receiver moves this Court, in the interest of

efficient disposition and management of the Receivership Assets for the benefit of the LifeTime Investors, to enter an Order compelling health care providers to release, from time to time, requested Medical Records pursuant to the Order and providing for confidentiality protections for the released Medical Records and information contained therein. A copy of a Proposed Order is attached hereto.

Respectfully submitted,

/s/ Joseph C. Oehlers

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Attorneys for Receiver H. Thomas Moran II

CERTIFICATE OF MAILING

This is to certify that on the 11th day of June, 2004, a true and correct copy of the foregoing document was mailed to:

D. Benham Kirk Jr.
Pignato & Cooper, P
119 N. Robinson, Suite 1120
Oklahoma City, OK 73102

Dennis J. Concilla
Carlile, Patchen & Murphy, LLP
366 E. Broad St.
Columbus, OH 43215

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Pickrel, Schaeffer & Ebeling
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Oklahoma Department
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120 N. Robinson
Oklahoma City, OK 73102

Texas State Securities Board
200 East 10th, 5th floor
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Austin, TX 78711-3167

California Dept. of Corporations
Securities Regulation Division
3700 Wilshire Boulevard
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Los Angeles CA 90010-3001

Florida Dept. of Banking
and Finance
Division of Securities and Investor
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Indiana Office of the
Secretary of State
Securities Division
302 West Washington, E-111
Indianapolis, IN 46204

Ohio Division of Securities
77 South High Street, 22nd floor
Columbus, OH 43215

ALL KNOWN INVESTORS

/s/ Joseph C. Oehlers
Joseph C. Oehlers

Agreements or agreements of a similar type (the "Agreements") with investors (the "LifeTime Investors"), wherein the LifeTime Investors paid money to LifeTime in exchange for the right to receive a payment from the maturities of the policies to which they were subsequently matched. As required by the Agreements, LifeTime established premium escrow accounts (the "Escrow Accounts") to create a reserve for payment of premiums on the Policies. At the time of my appointment as Receiver, the level of funding in the Escrow Accounts was insufficient to sustain the payment of premiums and some Policies within the portfolio were in imminent danger of lapsing. The Court, recognizing this danger, has previously authorized a Loan and Security Agreement (the "Loan Agreement") to obtain funds to pay the premiums on the Policies.

5. As a result of the financing through the Loan Agreement, there is expected to be sufficient funds with which to continue to pay premiums on the Policies and the cost of asset administration until at least the latter part of 2004. However, it may be necessary to eventually sell some of the Policies in order to continue to pay premiums and the cost of administration and to prevent the remaining Policies from lapsing. The Loan Agreement was entered into only to protect the interests of the LifeTime Investors until a more permanent solution could be reached. It may also be necessary to obtain additional financing in order to manage the Receivership Assets efficiently.

6. Current disposition plans include obtaining sufficient funds, through the sale of some or all of the Policies, to continue to pay premiums, pay the cost of administration and to return a portion of each LifeTime Investor's investment before any lapse in the retained Policies occurs.

7. Because of the nature of the Policies comprising the Receivership Assets, the value of each Policy to either the LifeTime Investors or to a prospective purchaser, is dependent

upon the health and life expectancy of the Viator insured by a given Policy.

8. In order to evaluate whether to retain, cancel or market each of the Policies, it will be necessary to obtain and review medical information from the Viators' health care providers. Ongoing access to updated health information will also be necessary for the continued valuation, monitoring and servicing of retained Policies. Likewise, if the Policies are sold, purchasers of interests in the Policies will require on-going access to updated medical information in order to monitor the status of that investment.

9. I anticipate engaging various individuals and entities to assist in the tasks of determining the value of each Policy, marketing any Policies that are sold and in monitoring and servicing the retained Policies. Many of these individuals or entities will require access to life expectancy-related health information for the Viators in order to carry out their tasks. In addition, prospective purchasers and entities approached for any further financing will require medical information related to Viator life expectancy in order to evaluate Policy value.

10. As part of the transaction in which each Viator sold to LifeTime the interest in the death benefits of a life insurance policy, the Viator executed forms authorizing health care providers to release the Viator's medical records.

11. The majority of the these medical records release forms were executed prior to April 14, 2001 and, therefore, do not contain the specific language required under the regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") which became effective on April 14, 2001.


12. Because of the large number of Viators insured under the Policies included in the Receivership Assets, any attempt to obtain a HIPAA-compliant medical records release form from each Viator would be very cumbersome and time-consuming. In addition, each Viator has

already received the benefit of the bargain in the transaction with LifeTime – a cash payment. Therefore, there is little incentive for a Viator to sign and return an additional medical records authorization form.

13. In other, similar, matters, efforts by my office to obtain new, HIPAA-compliant, release forms have resulted in a low response rate of approximately twenty – five percent (25%).

14. Because of the cash-flow and financing situation of the Receivership Assets, time is of the essence in obtaining and reviewing Viator medical records to determine the appropriate disposition of each Policy.

FURTHER AFFIANT SAYITH NOT.

By: 
H. Thomas Moran

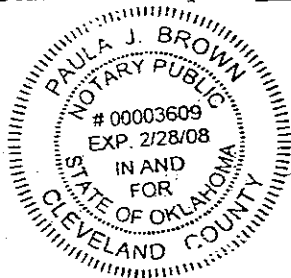
Subscribed and Sworn to before me this 10 day of June, 2004, by

H. Thomas Moran.


Notary Public

(SEAL)

My Commission Expires: 2/28/08



MEDICAL RECORDS CONFIDENTIALITY AGREEMENT

This Agreement is made this ____ day of _____, _____, by and between H. Thomas Moran, II, the court-appointed Receiver of the Assets of LifeTime Capital, Inc., ("Receiver") and _____ ("Recipient").

WITNESSETH:

WHEREAS, Moran was appointed Receiver for the assets of LifeTime Capital, Inc., a Nevada Corporation, ("LifeTime") by Order dated February 20, 2004, in Civil Case No. 3:04 CV 0059, in the District Court for the Southern District of Ohio, Western Division; and

WHEREAS, LifeTime's assets consist primarily of a viatical and senior settlement life insurance policy portfolio (the "Receivership Assets") comprised of life insurance policies (collectively, the "Policies" or each a "Policy"); and

WHEREAS, the viaticals are interests in life insurance policies in which the insured, or "Viator," who had been diagnosed as being terminally ill, sold his or her interest in the death benefit proceeds to LifeTime in return for a cash payment during his or her lifetime; and

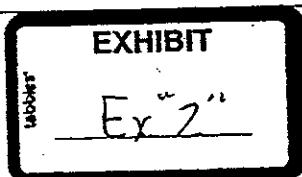
WHEREAS, given the nature of the Policies comprising the Receivership Assets, the current value of each Policy is dependent upon the health and life expectancy of the Viators insured under the Policies; and

WHEREAS, the Court, in Civil Case No. 3:04 CV 0059, in the District Court for the Southern District of Ohio issued an Order dated _____ ("Medical Records Order") compelling health care providers to release to the Receiver confidential medical records relevant to the health and life expectancy of the Viators ("Health Information"); and

WHEREAS, the Medical Records Order authorizes disclosure by the Receiver, under the terms of this Confidentiality Agreement, of Health Information to persons or entities engaged by the Receiver to evaluate, monitor and/or service the Policies and/or to entities from whom any further financing for the preservation of Receivership Assets is sought and/or to prospective Policy purchasers so that such prospective purchasers are able to conduct due diligence with respect to any given Policy; and

WHEREAS, the Recipient, a [describe relationship of person or entity to the Receivership Assets e.g. prospective purchaser] _____
requires Health Information for the purpose of [e.g. Policy servicing or evaluating for possible purchase]: _____

("Disclosure Purpose").



NOW THEREFORE, the parties agree as follows:

1. After execution of this Agreement, the Receiver shall disclose to the Recipient Health Information related to those Viators relevant to the Disclosure Purpose.
2. Recipient will accept and hold such Health Information as Confidential and so label or designate the Health Information and store or maintain same in a secure location. Recipient will use the Health Information only for the achievement of the Disclosure Purpose and will not use the Health Information for any other purpose.
3. Recipients who are entities shall only disclose Health Information to those employees or affiliated persons involved in achieving the Disclosure Purpose who have a need to know and shall require from those employees or persons obligations of confidence, non-disclosure and non-use for purposes other than the Disclosure Purpose.
4. Unless retention of Health Information is required of the Recipient under applicable laws or regulations, Recipient shall, within thirty (30) days of the achievement of the Disclosure Purpose return to the Receiver any and all copies of the Health Information and shall provide to the Receiver a sworn statement that all copies of the Health Information have been so returned within thirty (30) days of the achievement of the Disclosure Purpose.
5. If retention of copies of Health Information is required of the Recipient under applicable laws or regulations, Recipient shall, return to Receiver any unneeded copies of Health Information and provide to the Receiver a sworn statement specifying the legal basis for the retention of copies of any Health Information subsequent to the achievement of the Disclosure Purpose. Any retained Health Information shall continue to be held as Confidential and maintained as outlined above.
6. Notwithstanding the foregoing, Recipient agrees that within ten (10) days of a written request by the Receiver for return of the Health Information, the Recipient shall return all disclosed Health Information to the Receiver.
7. This Agreement contains the entire understanding between the parties with respect to the matters contemplated herein and supersedes all previous written and oral negotiations, commitments and understandings. This Agreement cannot be altered or other wise amended except pursuant to an instrument in writing signed by each of the parties and making reference to this Agreement.

8. A waiver of any term or condition of this Agreement shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach.
9. If any court of competent jurisdiction holds any part of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement.
10. A facsimile signature by any party to this Agreement shall be deemed sufficient to indicate acceptance of the terms and obligations of the same.

IN WITNESS HEREOF, the parties hereto have cause this Agreement to be executed by their duly authorize representatives as of the date first written above.

"Recipient"

By: _____

Title: _____

Date: _____

"Receiver"

By: _____

Title: _____

Date: _____

00047087.DOC

MEDICAL RECORDS CONFIDENTIALITY AGREEMENT

This Agreement is made this ____ day of _____, _____, by and between H. Thomas Moran, II, the court-appointed Receiver of the Assets of LifeTime Capital, Inc., ("Receiver") and _____ ("Recipient").

WITNESSETH:

WHEREAS, Moran was appointed Receiver for the assets of LifeTime Capital, Inc., a Nevada Corporation, ("LifeTime") by Order dated February 20, 2004, in Civil Case No. 3:04 CV 0059, in the District Court for the Southern District of Ohio, Western Division; and

WHEREAS, LifeTime's assets consist primarily of a viatical and senior settlement life insurance policy portfolio (the "Receivership Assets") comprised of life insurance policies (collectively, the "Policies" or each a "Policy"); and

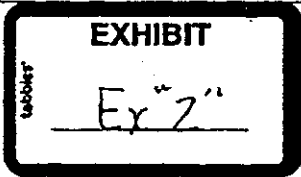
WHEREAS, the viaticals are interests in life insurance policies in which the insured, or "Viator," who had been diagnosed as being terminally ill, sold his or her interest in the death benefit proceeds to LifeTime in return for a cash payment during his or her lifetime; and

WHEREAS, given the nature of the Policies comprising the Receivership Assets, the current value of each Policy is dependent upon the health and life expectancy of the Viators insured under the Policies; and

WHEREAS, the Court, in Civil Case No. 3:04 CV 0059, in the District Court for the Southern District of Ohio issued an Order dated _____ ("Medical Records Order") compelling health care providers to release to the Receiver confidential medical records relevant to the health and life expectancy of the Viators ("Health Information"); and

WHEREAS, the Medical Records Order authorizes disclosure by the Receiver, under the terms of this Confidentiality Agreement, of Health Information to persons or entities engaged by the Receiver to evaluate, monitor and/or service the Policies and/or to entities from whom any further financing for the preservation of Receivership Assets is sought and/or to prospective Policy purchasers so that such prospective purchasers are able to conduct due diligence with respect to any given Policy; and

WHEREAS, the Recipient, a [describe relationship of person or entity to the Receivership Assets e.g. prospective purchaser] _____
requires Health Information for the purpose of [e.g. Policy servicing or evaluating for possible purchase]: _____
_____ ("Disclosure Purpose").



NOW THEREFORE, the parties agree as follows:

1. After execution of this Agreement, the Receiver shall disclose to the Recipient Health Information related to those Viators relevant to the Disclosure Purpose.
2. Recipient will accept and hold such Health Information as Confidential and so label or designate the Health Information and store or maintain same in a secure location. Recipient will use the Health Information only for the achievement of the Disclosure Purpose and will not use the Health Information for any other purpose.
3. Recipients who are entities shall only disclose Health Information to those employees or affiliated persons involved in achieving the Disclosure Purpose who have a need to know and shall require from those employees or persons obligations of confidence, non-disclosure and non-use for purposes other than the Disclosure Purpose.
4. Unless retention of Health Information is required of the Recipient under applicable laws or regulations, Recipient shall, within thirty (30) days of the achievement of the Disclosure Purpose return to the Receiver any and all copies of the Health Information and shall provide to the Receiver a sworn statement that all copies of the Health Information have been so returned within thirty (30) days of the achievement of the Disclosure Purpose.
5. If retention of copies of Health Information is required of the Recipient under applicable laws or regulations, Recipient shall, return to Receiver any unneeded copies of Health Information and provide to the Receiver a sworn statement specifying the legal basis for the retention of copies of any Health Information subsequent to the achievement of the Disclosure Purpose. Any retained Health Information shall continue to be held as Confidential and maintained as outlined above.
6. Notwithstanding the foregoing, Recipient agrees that within ten (10) days of a written request by the Receiver for return of the Health Information, the Recipient shall return all disclosed Health Information to the Receiver.
7. This Agreement contains the entire understanding between the parties with respect to the matters contemplated herein and supersedes all previous written and oral negotiations, commitments and understandings. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties and making reference to this Agreement.

8. A waiver of any term or condition of this Agreement shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach.
9. If any court of competent jurisdiction holds any part of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this Agreement.
10. A facsimile signature by any party to this Agreement shall be deemed sufficient to indicate acceptance of the terms and obligations of the same.

IN WITNESS HEREOF, the parties hereto have cause this Agreement to be executed by their duly authorize representatives as of the date first written above.

"Recipient"

By: _____

Title: _____

Date: _____

"Receiver"

By: _____

Title: _____

Date: _____

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