

AMENDMENT TO H.R. 5
OFFERED BY MR. WAXMAN OF CALIFORNIA

Page 15, after line 18, insert the following and re-designate the succeeding sections accordingly:

1 **SEC. 9. RESTRICTIONS ON PROTECTIVE ORDERS AND SEAL-**
2 **ING OF CASES AND SETTLEMENTS.**

3 (a)(1) In any health care lawsuit in which the plead-
4 ings state facts that are relevant to the protection of pub-
5 lic health or safety, a court shall not enter, by stipulation
6 or otherwise, an order otherwise authorized restricting the
7 disclosure of information obtained through discovery, an
8 order otherwise authorized approving a settlement agree-
9 ment that would restrict the disclosure of such informa-
10 tion, or an order otherwise authorized restricting access
11 to court records unless in connection with such order the
12 court has first made independent findings of fact that—

13 (A) such order would not restrict the disclosure
14 of information which is relevant to the protection of
15 public health or safety; or

16 (B)(i) the public interest in the disclosure of
17 past, present, or potential public health or safety
18 hazards is outweighed by a specific and substantial

1 interest in maintaining the confidentiality of the in-
2 formation or records in question; and

3 (ii) the requested order is no broader than nec-
4 essary to protect the confidentiality interest as-
5 serted.

6 (2) No order entered as a result of the operation of
7 paragraph (1), other than an order approving a settlement
8 agreement, may continue in effect after the entry of final
9 judgment, unless at the time of, or after, such entry the
10 court makes a separate finding of fact that the require-
11 ments of paragraph (1) continue to be met.

12 (b) In any health care lawsuit in which the pleadings
13 state facts that are relevant to the protection of public
14 health or safety, a court shall not enforce any provision
15 of an agreement between or among parties, or enforce an
16 order entered as a result of the operation of subsection
17 (a)(1), to the extent that such provision or such order pro-
18 hibits or otherwise restricts a party from disclosing any
19 information relevant to such health care lawsuit to any
20 Federal or State agency with authority to enforce laws
21 regulating an activity relating to such information.

22 (c)(1) Subject to paragraph (2), a court shall not en-
23 force any provision of a settlement agreement in any
24 health care lawsuit in which the pleadings state facts that
25 are relevant to the protection of public health or safety,

1 between or among parties that prohibits one or more par-
2 ties from—

3 (A) disclosing the fact that such settlement was
4 reached or the terms of such settlement (excluding
5 any money paid) that involve matters relevant to the
6 protection of public health or safety; or

7 (B) discussing matters relevant to the protec-
8 tion of public health or safety involved in such
9 health care lawsuit.

10 (2) Paragraph (1) applies unless the court has made
11 independent findings of fact that—

12 (A) the public interest in the disclosure of past,
13 present, or potential public health or safety hazards
14 is outweighed by a specific and substantial interest
15 in maintaining the confidentiality of the information
16 in question; and

17 (B) the requested order is no broader than nec-
18 essary to protect the confidentiality interest as-
19 serted.

20 (d) Notwithstanding subsections (a)(1)(B)(i) and
21 (c)(2)(A), when weighing the interest in maintaining con-
22 fidentiality under this section, there shall be a rebuttable
23 presumption that the interest in protecting personally
24 identifiable information of an individual outweighs the
25 public interest in disclosure.

1 (e) Nothing in this section shall be construed to per-
2 mit, require, or authorize the disclosure of classified infor-
3 mation (as defined under section 1 of the Classified Infor-
4 mation Procedures Act (18 U.S.C. App.)).

