

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ELOISE ROPER,)
)
Plaintiff,) Civil Action No.: 4:06-CV-119
)
vs.)
)
TERRY WILLIAMS, INDIVIDUALLY)
and d/b/a SIBERTON FENCE,)
LARRY WILSON TATE,)
ADMINISTRATOR OF THE)
ESTATE OF WOODROW TATE,)
DECEASED, AND SIBERTON)
FENCE SALES, INC.)
)
Defendants.)

**MOTION FOR A QUALIFIED PROTECTIVE
ORDER PURSUANT TO HIPAA**

COMES NOW Terry Williams, incorrectly identified as d/b/a Siberton Fence, and respectfully moves the Court for the entry of a qualified protective order under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA").

1.

This Defendant requests that this Court permit him access to the Plaintiff's medical providers for *ex-parte* discussions. The Defendant submits that in this case, where the Plaintiff is seeking money damages for allegedly significant injuries, such an order would be helpful and is mandated by the twin ideals of due process and fundamental fairness.

2.

This Defendant shows that Plaintiff was a patient/resident on a continuous basis at various medical facilities from approximately April 1, 2006 through July 12, 2006. Thus, Plaintiff's contact with independent witnesses who might be familiar with her condition, appearance, demeanor and knowledge of the accident is almost entirely limited to medical witnesses who fall within the potential scope of HIPAA, even if some of the information in their possession does not.

3.

Plaintiff and her counsel have complete access to these independent witnesses and have the ability to conduct independent ex-parte interviews to identify potential witnesses. Plaintiff and her counsel have declined to voluntarily permit defense counsel similar access to this pool of potential independent witnesses.

4.

This Defendant shows that access to the physicians, nurses, emergency medical technicians, certified nursing assistants, orderlies and administrative staff at the various facilities will allow this Defendant to determine whether, or if any of these individuals have relevant knowledge of the facts and circumstances.

5.

Additionally, this Defendant shows that some of these individuals may be in possession of evidence that is non-medical in nature. For instance, this Defendant shows that during the three and a half month period Plaintiff was a patient/resident she made statements to medical professionals about (1) the driving ability or lack thereof of the co-defendant Woodrow Tate, and (2) the manner in which the accident occurred.

Because all such statements may not have been charted, or because Plaintiff may have made statements about the accident to individuals who did not chart, such as certified nursing assistants, this Defendant seeks leave to contact all independent witnesses to determine if they have any relevant non-medical knowledge.

WHEREFORE, for the foregoing reasons, this Defendant respectfully requests that the Court GRANT his motion for a qualified protective order pursuant to HIPAA.

Respectfully submitted this 7th day of March, 2007.

s/David N. Nelson
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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM-ECF participants:

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Respectfully submitted,

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