

IN THE STATE COURT OF RICHMOND COUNTY
STATE OF GEORGIA

CLERK OF SUPERIOR COURT
RICHMOND COUNTY, GA.
JULY 12, 2007

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DESTINY JONES AND MARIA HALL)
JONES,)
)
Plaintiffs,)
v.)
)
DOCTORS HOSPITAL OF AUGUSTA,)
LLC, ET AL.,)
)
Defendants.)

ELAINE C. JOHNSON, CLERK
RICHMOND COUNTY, GA.

CIVIL ACTION FILE
NO. 2006-RCSC-1795

COPY

**ORDER GRANTING DEFENDANTS' MOTION FOR QUALIFIED
PROTECTIVE ORDER**

On July 9, 2007 this Court heard oral arguments regarding Defendants Brown and Radiology Associates' and Jimpsy B. Johnson, M.D.'s motion for a qualified protective order. In their motion, these defendants requested permission to conduct *ex parte* interviews with Destiny Jones' health care providers pursuant to HIPAA, 45 C.F.R. § 164.512(e)(i). Upon review of the record and after considering the arguments made by attorneys for the relevant parties, the motion is hereby GRANTED. Counsel for defendants Brown & Radiology and Dr. Jimpsy Johnson may conduct informal interviews with Destiny Jones' health care providers without counsel for plaintiffs being present. **However, Destiny's health care providers are not required by virtue of this order to consent to such meetings as their participation is considered voluntary.** Defendants' counsel shall so advise any health care provider, and give them a copy of this order prior to any interview.

CONTENTIONS OF THE PARTIES

This is a complex medical matter in which plaintiff Maria Hall alleges the defendant health care providers failed to comply with the applicable standard of care resulting in injuries to her minor daughter, Destiny Jones. Specifically, on September 18, 2004 Destiny' mother was not at home because she was working. Her now ex-husband was babysitting their children. After work, Hall returned home to discover that Destiny's feet had been burned. Destiny's father reportedly told Hall that, at some point during the day, Destiny had been crawling around on the floor behind him when he was cooking sausages. As he took the sausages off of the stove and turned around, he lost his balance and spilled the hot water on Destiny's feet scalding them. At the time, Destiny Jones was thirteen months old and was reportedly able to crawl and take a few steps.

Maria Hall subsequently sought treatment for the burns at MCG. Based on Mrs. Jones' report of how the burn injury occurred as opposed to the location and extent of the injuries to Destiny, health care providers at MCG suspected the child had been intentionally submerged into hot water by the biological father. Therefore, DFACS and Richmond County Sheriff's Department officials were notified of the potential child abuse. These entities investigated the foot burning event and ultimately transferred temporary custody of Destiny and her brother for a period of time to their maternal grandmother. Additionally, Destiny's father, Paul Jones, was arrested and charged with cruelty to children. He was incarcerated for a time and is now awaiting trial on these charges.

Nevertheless, the MCG physicians evaluated Destiny's feet and determined that she needed burn care from physicians at Doctors Hospital. Consequently, in the early

morning hours of September 19, 2004 Destiny was transferred to Doctors Hospital for this care, including subsequent skin grafts to her feet bilaterally. Because child abuse was suspected, physicians at Doctors Hospital ordered a “babygram” x-ray during her initial evaluation. This type of film is used to survey for other injuries which might not be readily apparent when child abuse is suspected. It was read as unremarkable.

Destiny was treated at Doctors Hospital from September 18, 2004 until September 23, 2004. She was readmitted to Doctors Hospital for infection to the feet from September 25, 2004 until September 28, 2004. Destiny was cared for by her mother, other relatives, and day care facility employees from September 28, 2004 until October 12, 2004. On October 12, 2004, Destiny was seen for routine care by Dr. Aziz at University Hospital. He subsequently sent the child to MCG for evaluation by health care providers there because she could not move her legs. X-rays performed at MCG reportedly revealed subluxation in the T11 to T12 area and some compromise of the spinal cord. On October 14, 2004 Destiny underwent surgery at MCG for the spinal defects and is considered a paraplegic.

Plaintiffs allege that Destiny’s back was in some manner injured prior to being seen and treated at Doctors Hospital in September 2004. Furthermore, plaintiffs allege that had additional x-ray films been performed at Doctors Hospital in September 2004 her spinal condition would have been identified, she would have been successfully treated, and Destiny would not now be paralyzed. These defendants deny that Destiny Jones’ spinal condition existed during the relevant time, dispute plaintiffs’ other allegations, assert that they met the applicable standard of care in their care and treatment of Destiny Jones, and deny that they caused or contributed to Destiny’s paraplegia.

SPECIFICS REGARDING ORDER GRANTING DEFENDANTS' MOTION

This lawsuit was filed on September 15, 2006. In response, Defendants denied all of the material allegations. Since that time, discovery has ensued. However, plaintiffs sought to prohibit defendants from conducting any informal, or *ex parte*, meetings with Destiny's health care providers. Consequently, defendants requested permission through this court to pursue such meetings. After reviewing the briefs submitted by counsel and following a hearing conducted on July 9, 2007, this court hereby GRANTS defendants' request to conduct such meetings as follows.

This court finds that 45 C.F.R. § 164.512(e)(i) permits disclosure of protected health information, oral and written, from a "covered entity," such as a physician or other health care provider, in the course of any judicial proceeding in response to an order of a court. There is no requirement under federal law that plaintiff consent to the release of this information. 45 C.F.R. 164.512. Furthermore, this court finds that *ex parte* communications with Destiny Jones' past and present treating physicians and other health care providers are authorized under both state and federal law. O.C.G.A. § 24-9-40; Orr v. Sievert, 162 Ga. App. 677 (1982); Smith v. American Home Product Corp. Wyeth-Ayerst Pharmaceutical, 855A 2d 609, 624 (N.J. Super. Ct. Law Div. 2003); Bayne v. Provost, 359 F.Supp. 2d 234 (N.D.N.Y. 2005); Shropshire v. Laidlaw Transit, Inc., 2006 U.S. Dist. Lexis 52943 (E.D. Mich. 2006); McCloud v. Board of Dir. of Geary County Hosp., 2006 U.S. Dist. Lexis 58087 (D. Kan. 2006); Harris v. Whittington, 2007 WL 164031 (D. Kan. Jan. 19, 2007).

However, the court cautions that the information released and discussed must be relevant to the pending litigation as outlined in the Contentions of the Parties section

above. In that regard, Destiny Jones' physicians or other healthcare providers may provide records and discuss her relevant medical conditions and past, present, and future care and treatment with defense counsel. The individuals with whom the covered entities are permitted to conduct such informal interviews include only the following: James W. Purcell, Susan Carter Mulherin, and Andrew W. Holliday. Defendants may not informally discuss Destiny's medical condition with treating physician Dr. Kimberly Bingaman because plaintiffs have identified her as an expert who will likely testify on behalf of plaintiffs.

Plaintiffs' counsel is also hereby prohibited from communicating with Destiny Jones' treating physicians or other health care providers, orally or in writing, in an effort to prevent or thwart the requested interviews. Specifically, plaintiffs' counsel shall not act in a manner which would tend to intimidate the health care providers or cause them any fear of repercussions should they agree to defense counsel's request for the interviews permitted herewith.

Furthermore, defense counsel is prohibited from using any such discussions and/or health care information thus provided for any purpose other than as part of the present litigation. Additionally, defense counsel must return the protected health information to the healthcare providers or destroy the protected health information at the end of this litigation. 45 C.F.R. § 164.512(e)(1)(v). Defense counsel, however, is not required to produce any notes or memorandum associated with the interviews which constitute attorney work product.

Finally, within ten (10) days after conducting any informal meetings with any healthcare provider pursuant to this order, defense counsel shall inform Plaintiffs'

counsel in writing of the person(s) with whom they spoke, the location of the meeting, and the date of the conference. Additionally, should any medical provider produce documentation not previously forwarded pursuant to request of the parties, this information will also be produced to plaintiffs within the aforementioned ten (10) day period.

SO ORDERED this 11th day of July, 2007.


RICHARD A. SLABY, JUDGE
RICHMOND COUNTY STATE COURT

CERTIFICATE OF SERVICE

A copy of the within Order was served upon the following parties by the Court:

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This 12th day of July, 2007.


RICHARD A. SLABY
J.S.C.R.C.G.