



**GRANTED**

*Henry M. DeLoach*

State Court of Fulton County  
\*\*\*FILED\*\*\*  
LexisNexis Transaction ID: 17924343  
Date: Jan 7 2008 3:18PM  
Mark Harper, Clerk

IN THE

STATE OF GEORGIA

BEVERLY A. WALKER,

Plaintiff,

vs.

JONATHAN MORRIS, M.D.; JONATHAN  
MORRIS, M.D., PC; THE BORTOLAZZO GROUP)  
I.L.C; ASHUTOSH VADDADI RAO, M.D.; )  
QUANTUM RADIOLOGY NORTHWEST, PC; )  
KENNESTONE HOSPITAL, INC. d/b/a )  
WELLSTAR KENNESTONE HOSPITAL; AND )  
JOHN/JANE DOES 1-5, )

Defendants

)  
)  
)  
) Civil Action  
) File No.: 2007EV002616D  
)  
)

**ORDER GRANTING DEFENDANT KENNESTONE HOSPITAL, INC.'S  
MOTION TO COMPEL**

On December 19, 2007, the Motion to Compel filed by Defendant Kennestone Hospital, Inc. d/b/a WellStar Kennestone Hospital came before the Court for oral argument. Having considered the briefs filed by the parties, as well as oral arguments presented by counsel, the Court makes following findings of facts and conclusions of law:

Throughout the pendency of this litigation, counsel for Kennestone Hospital has served upon Plaintiff's healthcare providers requests for Protected Healthcare Information pursuant to O.C.G.A. § 9-11-34(c)(2) and 45 C.F.R. § 164.512(e)(1)(ii)(A). In response to these requests, Plaintiff's counsel forwarded letters to each of the health care providers instructing them that they were prohibited by Georgia law and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) from having informal or "ex parte" discussions with defense counsel concerning Plaintiff's medical condition. On October 10, 2007, the Georgia Court of Appeals decided the case of Austin v. Moreland 2007 WL 2937564. That case holds that requests for

health information made pursuant to O.C.G.A. §9-11-34(c)(2) comply with the procedural requirements of HIPAA for the production of protected health information in litigation. This case further held that said code section provides the necessary notice and right to assert substantive objections to protected health information and, if no such objections are raised, defense counsel has the right to conduct informal or “ex parte” discovery interviews of Plaintiff’s past and present health care providers if the provider so chooses.


Having considered arguments of counsel and briefs, this Court finds that treating physicians in civil, personal injury litigation in Georgia are “ordinary” witnesses, who may be freely interviewed by counsel for both plaintiff and defendant. This Court further finds that HIPAA does not create any substantive change in Georgia law, but that the federal law simply provides a procedural floor for the initial production of protected information, which is satisfied by a defendant’s compliance with O.C.G.A. §9-11-34(c)(2). In light of the foregoing, it is hereby;

ORDERED that Plaintiff’s counsel write each of Plaintiff’s health care providers to whom letters were previously sent instructing them that neither HIPAA nor Georgia law prohibit them from discussing Plaintiff’s medical condition informally or “ex parte” and, therefore, they are free to informally meet with defense counsel if they choose to do so. It is further ORDERED that a copy of this Order accompany each such letter, and that copies of these letters be served upon counsel for Defendants. The only health care providers to whom this Order does not apply are Plaintiff’s previously identified mental health providers.

This \_\_\_\_\_ day of January, 2008.

\_\_\_\_\_  
The Honorable Henry J. Newkirk  
Judge, State Court of Fulton County

PRESENTED BY:



Henry D. Green, Jr., Esq.

Georgia Bar No.: 306875

David V. Johnson, Esq.

Georgia Bar No.: 393310

*Counsel for Defendant*

*Kennestone Hospital, Inc., d/b/a WellStar*

*Kennestone Hospital*

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3625 Cumberland Boulevard

Atlanta, GA 30339

770.690.8001

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

BEVERLY A, WALKER, )  
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 ) Plaintiff, )  
 ) Civil Action  
vs. ) File No.: 2007EV002616D  
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JONATHAN MORRIS, MD; JONATHAN )  
MORRIS, MD, PC; THE BORTOLAZZO GROUP )  
LLC; ASHUTOSH VADDADI RAO, MD; )  
QUANTUM RADIOLOGY NORTHWEST, PC; )  
KENNESTONE HOSPITAL, INC. d/b/a )  
WELLSTAR KENNESTONE HOSPITAL; AND )  
JOHN/JANE DOES 1-5, )  
 )  
 ) Defendants )

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served counsel for the opposing parties in the foregoing matter with a copy of *Order Granting Defendant Kennestone Hospital, Inc.'s Motion to Compel* by filing with Lexis-Nexis and depositing in the United States Mail with adequate postage thereon, addressed as follows:

**Counsel for Plaintiff**

Earl W. Gunn, Esq.  
Y. Kevin Williams, Esq.  
Claire C. Murray, Esq.  
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**Counsel for Co-defendant Jonathan Morris, MD, Jonathan Morris, MD, P.C., & the Bortolazzo Group, LLC**

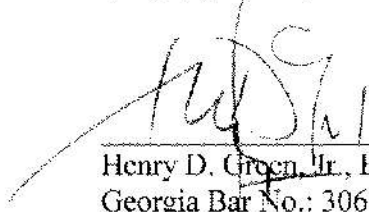
John E. Hall, Jr. Esq.  
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Atlantic Center Plaza, Suite 900  
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**Counsel for Co-defendant Ashutosh Vaddadi Rao, MD**

Theodore E.G. Pound, Esq.  
COMMANDER & POUND, LLP  
400 Galleria Parkway, Suite 460  
Atlanta, GA 30339

This 7 day of January, 2008.

GREEN, JOHNSON & LANDERS LLP



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Henry D. Green, Jr., Esq.  
Georgia Bar No.: 306875  
David V. Johnson, Esq.  
Georgia Bar No.: 393310

***Counsel for Defendant  
Kennestone Hospital, Inc., d/b/a WellStar  
Kennestone Hospital***

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This document constitutes a ruling of the court and should be treated as such.

**Court:** GA State Court of Fulton County

**Judge:** Henry M Newkirk

**Alternate Judge:** Unassigned

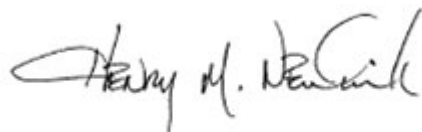
**File & Serve**

**Transaction ID:** 17918011

**Current Date:** Jan 07, 2008

**Case Number:** 2007ev002616d

**Case Name:** Walker, Beverly A vs Jonathan Morris MD

A handwritten signature in black ink, reading "Henry M. Newkirk". The signature is written in a cursive style with a large initial "H" and "N".