

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

BOBBY EVANS, SR. and)	
JANICE EVANS,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
v.)	
)	NO. 2009RCCV1228
BRIAN K. PHELAN, M.D.,)	
AUGUSTA CARDIOLOGY CLINIC,)	
P.C., KENNETH M. LONG, LONG'S)	
DRUGS, THOMSON, GEORGIA, INC.,)	
d/b/a MOYE PHARMACY-CORP.)	
d/b/a MOYE PHARMACY; ANGELA)	
N. STADLER, JETT LAVERN)	
McCULLOUGH AND JOHN DOES 1-20,)	
)	
Defendants.)	

**ORDER DENYING DEFENDANTS' MOTIONS SEEKING EX PARTE
COMMUNICATIONS WITH PLAINTIFF'S MEDICAL PROVIDERS**

Separate motions filed by the Defendants in the above-captioned civil action seeking to conduct *ex parte* communications with the medical providers of Plaintiff Bobby Evans, Sr. came on for hearing before the Court on June 24, 2010, the Honorable J. Carlisle Overstreet presiding. After considering the briefing and argument of counsel, the Court rules as follows:

This is a medical malpractice action alleging injuries to Plaintiff Bobby Evans, Sr. ("Mr. Evans") and damages resulting from what Plaintiffs allege was negligence on the part of the Defendants.

The Defendants named in this action each filed separate but similar motions seeking the same relief, specifically an authorization or an order from this Court granting their counsel the authority to engage in "*ex parte*" communications with Plaintiff Bobby Evans, Sr.'s medical

providers, that is unnoticed meetings without the opportunity for Mr. Evans or his attorneys to be present. Plaintiffs oppose the Defendants' motions.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires both reasonable notice and an opportunity to object to the unauthorized disclosure of irrelevant health information. See, Northlake Med. Ctr., LLC v. Queen, 280 Ga.App. 510, 515 (2006) (“Clearly, HIPAA contemplates a process in which disclosures are limited to relevant information, and a patient may object to particular disclosures that exceed the scope of the relevant inquiry.”); Moreland v. Austin, 284 Ga. 730, 733 (2008) (“HIPAA requires a physician to protect a patient’s health information, unless the patient is given reasonable notice and an opportunity to object.”). In its most recent ruling relating to this subject matter, Baker v. Wellstar Health Systems, Inc., Ga. Sup. Ct. Case No. S10A0994 (June 1, 2010), the Georgia Supreme Court recognized that even where a plaintiff may be deemed to have waived her right to privacy to some degree, any disclosure by her medical provider must nonetheless be limited to such information that is relevant to the medical condition that she has placed at issue.

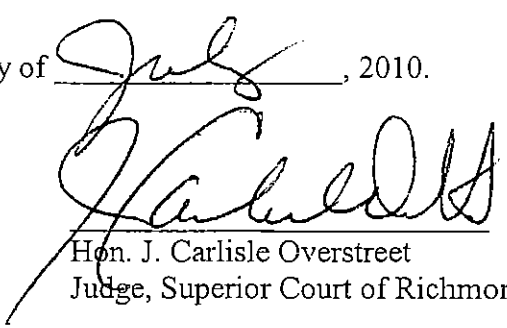
The determination of what is relevant in any particular case is a question of law decided by the Court upon consideration of the facts and evidence bearing on that issue. See, Am. Southern Ins. Group, Inc. v. Goldstein, 291 Ga.App. 1, 9 (2008) (“Questions of relevance are within the domain of the trial court. . . .”); Brock v. Wedincamp, 253 Ga.App. 275, 281 (2002) (“The question [of relevancy] must be determined in each case according to the facts of that particular case and in accordance with the teachings of reason and judicial experience.”). The order sought by the Defendants herein does not provide any meaningful specification of what information is being sought from any particular medical provider so it is impossible for the Court to determine whether or not any of the information that may ultimately be sought or disclosed

would be relevant. See also, Allen v. Wright, 282 Ga. 9, 13 (2007) (“the failure to require a specific and meaningful identification of the information to be disclosed” is contrary to HIPAA). Further, defense counsel cannot anticipate what any particular medical provider may disclose during the course of any *ex parte* communication so the risk that any communication would exceed the scope of the relevant inquiry would not be eliminated by the entry of the order sought by the defense herein, and these disputed issues would not be resolved.

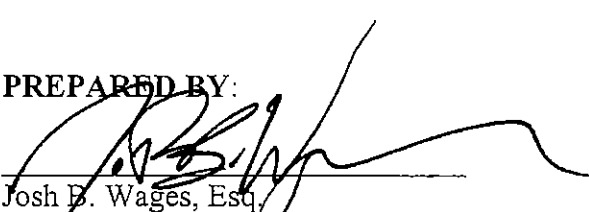
In order to properly limit any disclosure of the Plaintiff’s medical information to matters relevant to the medical condition at issue, and to properly recognize the Plaintiffs’ rights under HIPAA to reasonable notice and opportunity to object to irrelevant disclosure, the Court holds that any communication between the Defendants and the Plaintiffs’ medical providers shall be limited to the various methods of discovery available under the Georgia Civil Practice Act.

Based on the foregoing, the Defendants’ respective motions requesting an authorization or an order granting their counsel the authority to conduct *ex parte* communications with Plaintiffs’ medical providers are DENIED.

SO ORDERED, this 26th day of July, 2010.


Hon. J. Carlisle Overstreet
Judge, Superior Court of Richmond County

PREPARED BY:


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CERTIFICATE OF SERVICE

The undersigned, counsel for Plaintiffs in the above civil action, hereby certifies that he has this day served all parties to this civil action with a copy of the foregoing **ORDER DENYING DEFENDANTS' MOTIONS SEEKING *EX PARTE* COMMUNICATIONS WITH PLAINTIFF'S MEDICAL PROVIDERS** by mailing same, properly stamped and addressed, to their attorneys of record, as follows:

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This 28th day of July, 2010.

A handwritten signature in black ink, appearing to read "J.V. Painter", written over a horizontal line.