

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NAOMI BOWEN,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
v.)	NO. 10A29920-5
)	
PHILIPS TOWER DECATUR, INC.,)	
GEORGIA PRESBYTERIAN HOMES,)	
INC. a/k/a "PRESBYTERIAN HOMES)	
OF GEORGIA, INC.", and)	
THYSSENKRUPP ELEVATOR)	
CORPORATION a/k/a)	
THYSSENKRUPP ELEVATOR)	
COMPANY,)	
)	
Defendants.)	

QUALIFIED PROTECTIVE ORDER

This matter comes before this Court on Defendants Joint Motion for a Qualified Protective Order. Having considered Defendants' motion, all responsive pleadings, and all matters of record, the Court hereby GRANTS Defendants' Motion, as follows:

IT IS HEREBY ORDERED that Defendant and/or Defendant's counsel are hereby permitted to obtain Naomi Bowen's medical records and engage in *ex parte* communications with Ms. Bowen's healthcare providers for purposes of this litigation only. This Order applies to the healthcare providers listed in Appendix A and the medical condition(s) at issue in the litigation listed in Appendix B. Ms. Bowen's healthcare providers are **ONLY** permitted to discuss "information [that] is relevant to the medical condition[s] the litigant has placed in issue in the legal proceeding."¹ "Relevant" information is strictly limited to Plaintiff's protected health information (PHI), including any past, present, or future care and treatment of Plaintiff's medical condition(s) which is at issue in

¹ See Baker v. Wellstar Health Systems, Inc., S10A0994 (Decided November 1, 2010).

this proceeding as set forth in Appendix B. **This Court notes, however, that Plaintiff's treating healthcare providers are not required to engage in *ex parte* communications with Defendant and/or Defendant's counsel, but they may do so at their own choosing.**

Defendant and Defendant's counsel may only interview Plaintiff's treating medical providers identified by name or reference in Plaintiff's medical records and only after Defendant has obtained those medical records via a request for records pursuant to O.C.G.A. §9-11-34(c) or from Ms. Bowen's counsel.

IT FURTHER HEREBY ORDERED, pursuant to HIPAA² and Baker, *supra*, that:

- Defendant and Defendants' counsel are forbidden from using or disclosing Ms. Bowen's protected health information for any purpose other than this litigation.
- Defendant and Defendants' counsel shall return any protected health information to the physicians and other healthcare providers or destroy the protected health information, including all copies made, at the end of this litigation.
- The identities of the healthcare providers that may be interviewed by Defendants' counsel are limited to those treating medical providers identified by name or reference in Plaintiff's medical records and only after Defendant has obtained those medical records via either: 1) a request for records pursuant to O.C.G.A. §9-11-34(c); or 2) production of records to Defendant by Plaintiff. A list of these providers is set forth in Appendix A.
- The medical condition(s) at issue in the litigation regarding which the health care provider(s) may be interviewed are limited to those "relevant" issues described above in this Order.
- By receipt of a copy of this Qualified Protective Order, the medical provider to be interviewed shall be made aware of the fact that the **interview is at the request of the**

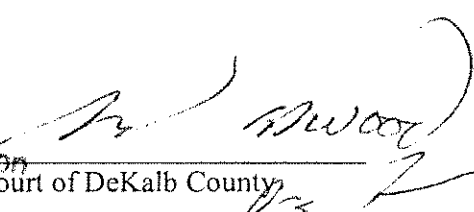
² The Health Insurance Portability and Accountability Act of 1996 is commonly referred to as HIPAA.

defendant, not the patient-plaintiff, and is for the purpose of assisting defense counsel in the litigation.

- By receipt of a copy of this Qualified Protective Order, the medical provider to be interviewed shall be made aware of the fact that the health care provider's participation in the interview is voluntary.
- Any meeting conducted by Defendant or Defendants' counsel pursuant to the Order shall be electronically recorded and transcribed for the sole and express purpose of preserving a record in the event Plaintiff challenges the propriety of a meeting.³ No transcription or recording of a meeting conducted pursuant to this Order shall be released, produced or otherwise disclosed to Plaintiff or Plaintiffs' counsel until This Court has conducted an *in camera* inspection of the transcription, determined the meeting has exceeded the permissible scope of this Order, and issued an order directing the disclosure of the transcription.

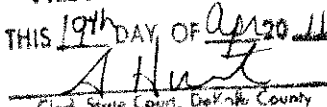
IT IS FURTHER ORDERED that Plaintiffs and Plaintiffs' counsel are prohibited from attempting to thwart or otherwise discourage Ms. Bowen's medical providers from participating in such meetings with Defendants' counsel.

SO ORDERED this 19 day of April, 2011.

By designation 
Judge, State Court of DeKalb County

Tendered by:

Brantley C. Rowlen
LEWIS BRISBOIS BISGAARD & SMITH, LLP
1180 Peachtree Street, N.E., Suite 2900
Atlanta, Georgia 30309
404.348.8585
404.467.8845 (fax)

FILED IN THIS OFFICE
THIS 19th DAY OF April 2011

Clerk State Court, DeKalb County

³ Defendants and Defendants' counsel agree to store two electronic copies and one hard copy of each electronic recording.

Appendix A

1. Robert Monett, M.D.
200 E Ponce De Leon Avenue
Decatur, Georgia 30030-3466
2. Benjamin Holten, M.D.
1365 Clifton Road, N.E.
Atlanta, GA 30322-1013
3. Christopher Krebbs, M.D.
Radiology Associates of DeKalb
2701 N Decatur Road
Decatur, Georgia 30033
4. Pamela Vick, M.D.
Pain Consultants of Atlanta
200 East Ponce de Leon Avenue
Suite 250
Decatur, Georgia 30030
5. Kent Swaine, M.D.
Sunrise Hospital and Medical Center
3186 South Maryland Parkway
Las Vegas, Nevada 89109
6. Ralph Nietrzeba, M.D.
Lung Center of Nevada
3121 Maryland Parkway
Suite 502
Las Vegas, Nevada 89109
7. Lisa Gambino, M.D.
2950 South Maryland Parkway
Las Vegas, Nevada 89109
8. Kaveh Khajavi
Georgia Spine and Neurosurgery Center
2675 North Decatur Road
Suite 110
Decatur, Georgia 30033
9. Sharon Rabinovitz
The Emory Clinic
Post Office Box 102632
Atlanta, Georgia 30368-2632

10. Emory University Hospital
Department of Emergency Medicine
1364 Clifton Road
Atlanta, Georgia 30322

11. Frederick Paul Yilling, M.D.
5669 Peachtree Dunwoody Road, N.E.
Atlanta, Georgia 30067

Appendix B

1. Pain management
2. Back an/or leg injuries, pain and treatment of same
3. Lupus
4. Anxiety/Depression
5. Pulmonary issues, such as chronic bronchitis and asthma
6. Prescriptions for treatment of the above conditions