

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

PAULINE CHACHA and CHARLES	:	
CHACHA, individually and as	:	
parents of IAN BABERE, a	:	
minor,	:	
	:	
Plaintiffs,	:	
	:	Civil Action File
vs.	:	
	:	No. 06A-60059-4
STEPHANIE C. CARMICHAEL, M.D.	:	
et al.,	:	
	:	
Defendants.	:	

O P I N I O N

Upon consideration of Defendants' Motion for a Qualified Protective Order Authorizing Defendants to Conduct Ex Parte Interviews with Pauline Chacha and Ian Babere's Treating Physicians filed on September 3, 2009; after reviewing the motion, response, proposed order submitted jointly by Plaintiffs, proposed order submitted jointly by Defendants and other documents in the file and hearing, on November 6, 2006, the arguments of counsel, the Court opines as follows.

Moreland v. Austin, 284 Ga. 730 (670 SE2d 68) (2008), makes it clear, albeit by negative implication, that defense counsel may contact a plaintiff's prior treating physicians to discuss his or her medical history if such counsel complies with HIPAA regulations:

[I]n order for defense counsel to informally interview plaintiff's treating physicians, they must first . . . comply with . . . 45 CFR § 164.512(e).

284 Ga. at 734 (citation omitted), and

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HIPAA . . . is applicable to ex parte oral communications between defense counsel and a plaintiff's prior treating physicians. Accordingly, defense counsel cannot contact a plaintiff's prior treating physicians to discuss his or her medical history without complying with HIPAA regulations.

Id. at 735.¹

What this Court finds not clear, however, is how such compliance is obtained in this context of ex parte communications. Subparagraph (i) of 45 CFR § 164.512(e)(1) ("the rule") provides for disclosure in response to a Court order² and clearly contemplates that the Order specify the particular information authorized to be disclosed. Accordingly, this approach seems ill-suited to ex parte communications.

Alternatively, there is subparagraph (ii) of the rule.³ That, however, involves disclosure "[i]n response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court . . . ," and that approach seems equally ill-suited to ex parte communications.

In the Court's opinion, the proposed order submitted by Defendants is a proper attempt to comply with Moreland, *supra*, and the Court accordingly will sign it and have it entered by the Clerk.

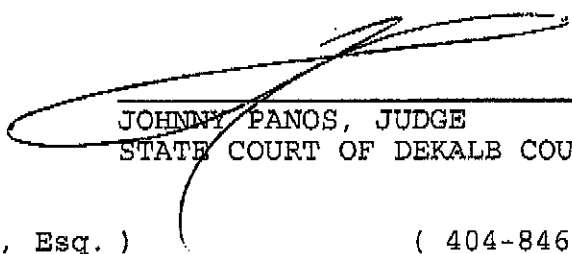
¹The Court is unpersuaded by both Exh. 1 to the response and the response itself.

²There is no mention at this point in the rule of a "qualified protective" order.

³It is under this subparagraph that a "qualified protective order" comes into play.

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SO ORDERED, this 11th day of November, 2009.



JOHNNY PANOS, JUDGE
STATE COURT OF DEKALB COUNTY

c: Gregory B. McMenemy, Jr., Esq.)	(404-846-2829
Frank W. Spector, Esq.)	(410-385-0087
Robert P. Monyak, Esq.) VIA FACSIMILE	(404-607-0465
Daniel J. Huff, Esq.)	(404-892-4033
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The healthcare providers are not required to consent to such meetings with Defendants' counsel; their decisions to participate are purely voluntary. Further, the healthcare providers may condition such interviews upon the presence of personal counsel and/or Plaintiffs' counsel. Counsel for Defendants shall so advise the healthcare providers and furnish them a copy of this Order prior to any such interview. Plaintiffs' counsel is prohibited from attempting to prevent or thwart such interviews.

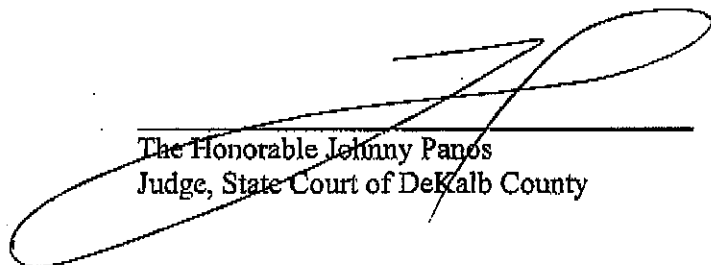
The healthcare providers may provide and discuss with Defendants' counsel records, information, and opinions related to medical condition, treatment, diagnosis, prognosis, and medical causation of Plaintiffs Pauline Chacha and Ian Babere, but only with respect to the issues presented in this case. These healthcare providers may also discuss with Defendants' counsel Plaintiffs' medical condition and the past, present, and future care and treatment rendered by other health care professionals to Plaintiffs, but only with respect to the issues presented in this case.

The disclosed healthcare information may not be used for any non-litigation purpose and may be disclosed only to Defendants' counsel and their employees and/or agents for litigation purposes. Further, this Order will expire at the conclusion of the present litigation, at which time Defendants' counsel shall return the disclosed healthcare information to the healthcare providers or destroy the disclosed healthcare information (including all copies made).

Defendants' counsel is not required to produce any notes associated with the interviews, which constitute work product. However, should any healthcare provider produce documentation not previously provided to all parties, copies of this documentation shall be produced to Plaintiffs' counsel within 10 days of obtaining the same.

Nothing in this Order shall be deemed to relieve any party or attorney of the requirements of the Georgia Civil Practice Act. Defendants' counsel may amend Exhibit "A" as discovery proceeds.

SO ORDERED this 11th day of Nov, 2009.



The Honorable Johnny Panos
Judge, State Court of DeKalb County

- cc: Gregory B. McMenemy, Jr., Esq.
- Frank W. Spector, Esq.
- Mark C. Kopec, Esq.
- Daniel J. Huff, Esq.
- Julye Johns, Esq.
- Robert P. Monyak, Esq.
- Alison Dobes, Esq.
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- Amy L. Jett, Esq.
- Timothy H. Bendin, Esq.
- Kristin L. Hiscutt, Esq.

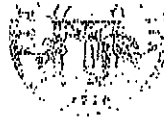
EXHIBIT A

The following is a list of healthcare providers with whom Defendants' counsel may conduct *ex parte*, informal interviews pursuant to this Court's Order:

Gary Alan Glasser, MD
Kay S. Entekin, MD
Terry William Wood, MD
Davina Dansby, MD
Rose Taylor, MD
Alex T. Parker, MD
Jerome Michael Armand, MD
Madeleine del Portillo, MD
Laura S. Lord, MD
Olufolake Adisa, MD
Di'Net Sintim-Amoah Lightfoot, MD
Evelyn Simkins, MD
Jay S Coffsky, MD
Joseph Wiessman, MD
Claudia Y Venable, MD
Arun A. Rao, MD
Nancy R. Griner, MD
Steven E. Sobol, MD
Paul Paker, MD
Dinesh G. Patel, MD
Jennifer W. Hansen, PT
Susan H. Mayne, PT
Sara Evans Phillips, OTR/L
Cynronica Thompson, OTR/L
Sara Nunning, MA, CCC-SLP
Michelle Spady, MS, CCC-LSP
Kari Becker Sykes, MA, CCC-SLP
Paul M. Fernhoff, MD
Conrad R. Cole, MD
Benjamin D. Gold, MD
Walter C. Ifeadike, MD
Bess T. Schoen, MD
Gayathri J. Tenjarla, MD
Scott Batchelor, MD
Karen F Colton, MD
Gary E. Freed, DO
David Goo, MD
Bethany Jackson, MD

Shabnam Jain, MD
Paul S. Johnson, MD
Wendalyn K. King, MD
Tabitha Lyon, MD
Mike Miello, MD
Judson Miller, MD
Roshni V. Patel, MD
Harold K. Simon, MD
Joseph Snitzer III, MD
Samuel James Spizman, MD
Ellen S. Stevenson, MD
Jesse J. Sturm, MD
Corinne Taylor, MD
Stephanie M. Walsh, MD
Anna Bramwell, MD
Lindsay Green, MD
Camden L. Hebson, MD
Andrea F. Klopman, MD
Philip J. Holt, MD
Nicolas S. Krawiecki, MD
Tina Chavrashvili, MD
Zane Pollard, MD
John S. Blanco, MD
Dennis Devito, MD
Ole Anton Raustol, MD
Najeeba Bootwala, MD
Olabisi Pearse, MD
Javad Deganian, MD
Reid Fotion, MD
Josephine Dunagan, MD
Mary T. Cox, MD
Kathryn Schaefer, MD
R. Arnold Isley, MD
George O. Atkinson, Jr., MD
Turner I Ball, Jr., MD
Estelle R. Bank, MD
Shelli Bank, MD
Paula N. Dickson, MD
John D. Grattan-Smith, MD
Robert L. Lorenzo, MD
Laura Ellen Patrick, MD
Stephen F. Simoneaux, MD
Nelson Anderson, MD
Laura Hayes, MD

Kristen Lloyd, MD
Stephen Sabourin, MD
Barbara M Aleksa-Parr, CCC-SLP
Karen R. Chambers, PT
Maria Theresa F. Cruz
April D Girard, OT
Elizabeth M. Harding, CCC-SLP
Anne Robertson, PT
Felicia Lester, PA
Margaret Adam, MD
Chunli Yu, MD
Christa Lese Martin, MD
Debra Saxe, PhD
S. Simone, MD
R. Lorenz, MD
L. Patrick, MD
C. Venabl, MD
A. Rao, MD
Tabitha Lyon, MD
Leslie Boyce, MD
Kendall Payne, MD
Alex Parkinson, MD
Bridgett Cobb, MD
D. Clementson, MD
Eric Graham, MD
Paul Parker, MD
John Taylor, MD
Kristi Iwan, RN
Hal Simon, MD
Avani Ingley, MD
Mary Ann Cornwall, MD
Leticia Briceno, MD
Chandra Yancy, PA
Anita Sethna, MD
Joseph Woods, MD
James Shropshire, MD
Kalpesh Patel, MD
Karen Colton, MD
Daniel Gruskin, MD
Jacquelyn Maddox, MD
Melissa Cirillo, MD
Ira Adams Chapman, MD
Pam Chitika, PT



STATE COURT OF DEKALB COUNTY

DEKALB COUNTY COURTHOUSE
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TRANSMISSION COVER SHEET

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