

**IN THE STATE OF DEKALB COUNTY
STATE OF GEORGIA**

CHARLEY WEST, III and DEBORAH
WEST, Individually, and as Natural
Parents and Guardians of CHARLEY ROY
(CROY) WEST, DECEASED, a Minor,

PLAINTIFFS,

v.

CHILDREN'S HEALTHCARE OF
ATLANTA, INC.

DEFENDANT.

Civil Action File No.:
10A29581-5

Jury Trial Demanded

**ORDER GRANTING IN PART AND DENYING IN PART THE DEFENDANTS'
MOTION FOR RECONSIDERATION OF QUALIFIED PROTECTIVE ORDER**

The parties, represented by counsel, appeared before the Court on August 3, 2011 as scheduled for oral argument on the Defendant's Motion for Reconsideration of Qualified Protective Order, entered by this Court May 23, 2011. The Court has considered the parties' arguments, briefs and the governing law.

The Defendant has argued for two amendments to the Court's Qualified Protective Order. First, they have requested the Court reconsider its requirement that the Defendant provide the Plaintiffs with notice or transcription of interviews with listed health care providers. Secondly, the Defendant requests the Court to reconsider its ruling requiring the health care providers to provide to the Plaintiffs previously undisclosed oral medical records, that is the providers' recollections and mental impressions, revealed either in the course of ex parte interviews with Defendant's counsel or at any other time. The Plaintiffs object to any amendment to the Qualified Protective Order and object most strongly to the Defendant's conducting ex parte

interviews with health care providers who work in the Defendant's Scottish Rite and Egleston locations.

The Court has considered closely the arguments of both parties and the amended listing of the providers at issue. This Court's ruling is controlled by the Georgia Supreme Court's opinion in Baker v. Wellstar, 288 Ga. 336 (2010), which intertwines both the requirements of HIPAA and the further patient protections of Georgia law in its direction to the trial courts.

The crux of the issue is the potential revelation of the providers' previously undisclosed mental impressions or recollections in the course of questioning by the Defendant. Of the "dangers associated with ex parte interviews of health care providers" enumerated in Division 3(a) of Baker, the second listed concern, "the potential for disclosure of information, such as mental impressions not documented in the medical record, that the health care provider has never actually communicated to the patient-plaintiff," is the most difficult to control. While the Plaintiff's concern that the natural alliance between the Defendant and its associate providers might either skew the recollection of the providers or encourage disclosure of previously undisclosed oral medical records, the Court has concerns that the type of information sought by other providers may be the sort of information which is not usually recorded by health care providers in written records. For example, two of the primary care providers from Kaiser Permanente, Dr. Washington and Dr. Dubose, would be asked about the family's management of Croy's condition. Further, the Court finds it is crucial that the Plaintiff have direct access to the mental impressions and recollections of all providers involved in Croy's treatment in the course of his last acute illness.

Therefore, the Court will not allow the Defendant to conduct ex parte interviews without notice to the Plaintiffs with any of the health care providers listed from CHOA at Egleston and

Scottish Rite, Kaiser Permanente or any facility from which the deceased received care during his last illness. The providers whom the Defendants can interview ex parte without notice are Dr. John A. Phillips, III, Jason Cavin, Dr. Nate Call, Dawn Willoughby Smith, Jennifer Colon and Dr. Les Rubin.

The Court will amend Section 3 of its order which requires the Defendant to provide the Plaintiff with transcription of the enumerated interviews upon four days' notice such that the parties will split the cost of transcription.

The Court leaves intact its ruling requiring the health care providers' immediate supplementation of oral medical records to the Plaintiffs.

SO ORDERED this 13th day of September, 20 11.

Eleanor L. Ross
Eleanor L. Ross, Judge
State Court of DeKalb County

Copy to:

- ✓ Harvey R. Spiegel, Esq.
- ✓ R. Page Powell, Jr., Esq.
- ✓ Julye Johns, Esq.

FILED IN THIS OFFICE
THIS 13th DAY OF Sept 2011
K Tankersley
Clerk State Court, DeKalb County