

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY, GA
FILED IN OFFICE
10 DEC 14 PM 2:59
BIANE O. WEBB
STATE COURT CLERK-02

WILLIAM H. NEWELL, and)
BARBARA NEWELL)
)
Plaintiffs,)
v.)
) CIVIL ACTION
MARIETTA EYE CLINIC, P.A.,) FILE NO.: 2010A2052-6
MARIETTA EYE CLINIC, P.A., d/b/a)
MARIETTA EYE SURGERY,)
DR. CHARLES HO, and)
DR. MICHAEL KROLL,)
)
Defendants.)

QUALIFIED PROTECTIVE ORDER

WHEREAS this matter comes before this Court on a Motion for a Qualified Protective Order; and

WHEREAS this Court has considered the Motion, all responsive pleadings, all matters of record, and the decision of the Georgia Supreme Court in Baker v. Wellstar Health Systems, Inc., No. S10A0994, 2010 WL 4272843 (Ga. Nov. 1, 2010);

IT IS HEREBY ORDERED that the Defendants and their counsel are permitted to engage in *ex parte* communications with certain treating physicians and other healthcare providers of William Newell enumerated in Exhibit A attached hereto.

This Court notes, however, that the *ex parte* communications are at the request of the Defendants, not the patients/Plaintiffs, for the purpose of assisting defense counsel in the litigation, and thus, the treating physicians and other healthcare providers are not required to engage in *ex parte* communications with the Defendants or their counsel, but they may do so at their own choosing.

This Court also notes and recognizes that discovery in this matter is ongoing, and therefore it is possible that Plaintiffs will provide to Defendants additional medical providers


for William Newell as he continues to develop and seek medical care. It is hereby ordered that Defendants provide Plaintiffs' counsel with fourteen (14) days advance notice prior to engaging in *ex parte* communications with any additional providers not specified in Exhibit A.

The Defendants and their counsel may inquire of the treating physicians and other healthcare providers, and the treating physicians and other healthcare providers may discuss with the Defendants and their counsel, only matters relevant to the medical conditions of William Newell which are at issue in this proceeding. The permissible scope of these discussions includes all topics relevant to these issues, including cataract surgery; complications of cataract surgery; infection following cataract surgery; management of post-operative infections; management of post-operative complications; paracentesis/tap postoperatively; intraocular pressure post-operatively; incision/wound leakage; postoperative inflammation; all possible causes of Mr. Newell's alleged infection; headaches; endophthalmitis; vitrectomy; intravitreal injections; ultrasound; referrals; Mr. Newell's ocular history; Mr. Newell's infection history 6 months before and 6 months after the March 6, 2008 surgery; sources of infection; all possible causes of blindness; factors that may have exacerbated or contributed to the alleged infection; steps that may have been taken to avoid the alleged infection; steps that may have been taken to avoid blindness; factors that may have exacerbated or contributed to blindness; whether the conduct that Plaintiffs claim caused or contributed to the alleged infection did so or not; the nature and extent of each of Mr. Newell's alleged injuries; the treatment that Mr. Newell has received or may in the future receive for his blindness; and Mr. Newell's prognosis.

It is hereby further ordered that Defendants and their counsel are forbidden from using or disclosing any protected health information obtained during the meetings authorized by this Order for any purpose other than this litigation.

It is further ordered that Defendants and their 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.

SO ORDERED this 14th day of December, 2010.



The Honorable Toby B. Producers
Judge, State Court of Cobb County

cc: Jonathan C. Peters, Esq.
Angela M. Hinds, Esq.
Anna Burdeshaw Fretwell, Esq.
Elizabeth Yarbrough, Esq.
Jenny Jensen, Esq.

EXHIBIT A

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

1. Lakshmana Kooragayala, M.D.
2. James C. Hays, M.D.
3. Geoffery Posner, M.D.
4. Timothy Helton, M.D.
5. Albert Clairmont, M.D.

CERTIFICATE OF SERVICE

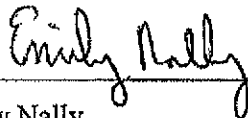
This is to certify that I have this date served copies of the within and foregoing Order by mailing same (through the Cobb County Mail System) to the parties in this case as follows:

Jenny E. Jensen, Esq.
Jones, Jensen & Harris
4720 Peachtree Industrial Boulevard, Suite 305
Norcross, GA 30071

Anna Burdeshaw Fretwell, Esq.
Huff, Powell & Bailey, LLC
1355 Peachtree Street, Suite 2000
Atlanta, GA 30309

Alison Dobes, Esq.
Peters & Monyak, LLP
One Atlanta Plaza, Suite 2275
950 East Paces Ferry Road, N.E.
Atlanta, GA 30326

This 14 day of December, 2010.



Emily Nally
Judicial Clerk to Judge Toby Prodgers
State Court of Cobb County
(770) 528-1782