

FILED
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OCT -9 2009

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

SUPERIOR COURT OF
BIBB COUNTY, GEORGIA

ELIZABETH COLLINS HOLT f/k/a
ELIZIBETH NANETTE COLLINS,
individually, and ELIZABETH COLLINS
HOLT f/k/a ELIZABETH NANETTE
COLLINS as ADMINISTRATRIX OF THE
ESTATE OF TONY STEVE COLLINS,

Plaintiffs,

v.

CIVIL ACTION NO.

06-CV-45188

HOUSTON HEALTHCARE COMPLEX
MSO, INC. d/b/a HOUSTON MEDICAL
CENTER; HOUSTON HEALTH CARE
COMPLEX ASC, LLC d/b/a HOUSTON
MEDICAL CENTER; WANDA MAXWELL,
RN; TERSA BROOKS, LPN; ROSEMARRY
ELIOTT, RN; RICHARD WATSON, RN;
BRENDA SMITH, RN; KATHERYN BOYD,
RN; MONICA COTTON, RN;
RAVINDRAPRASAD SHEKARAPPA, MD;
JOSE RIMANDO, MD; MIDDLE GEORGIA
MEDICAL ASSOCIATES, P.C.; EMORY
HEALTHCARE, INC; EMORY UNIVERSITY
d/b/a EMORY CRAWFORD LONG
HOSPITAL; JANE DOE, RN; LINDA PAGE,
RN; SUSAN FINCHER, RN; RITZA
CRESSANT, RN; AMERICAN
TRANSITIONAL HOSPITALS, INC. d/b/a
SELECT SPECIALTY HOSPITAL -
ATLANTA,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION
FOR QUALIFIED PROTECTIVE ORDER**

The parties in the above-captioned case come before the Court over a
discovery dispute. Houston Healthcare Complex MSO, Inc. et. al. ("Defendants")
seek a "Qualified Protective Order" from the Court to authorize them to have *ex parte*

communications with Tony Steve Collins' treating physicians. Defendants allege that the Court would be reducing the cost of discovery, complying with the Health Insurance Portability and Accountability Act ("HIPPA"), and also be consistent with longstanding Georgia rules of discovery by granting the motion. See, Orr v. Sievert, 162 Ga.App. 677, 679 (1982)("Once a patient places his care and treatment at issue in a civil proceedings, there no longer remains any restraint upon a doctor in the release of medical information concerning the patient within the parameters of the complaint.").

Mr. Collins' widow, Elizabeth Nanette Collins on behalf of herself and her late husband's estate, ("Plaintiff") objects to this motion. Plaintiff claims that HIPPA cautions against such *ex parte* communications and that the Defendants request for permission for *ex parte* discussions will only further frustrate discovery efforts. See, Moreland v. Austin, 284 Ga. 730 (2008)(holding that HIPPA preempts state law and thus forbids *ex parte* communication unless patient consents, obtained a court order, or otherwise complied with 45 CFR § 164.512(e)). Upon review of the briefs and arguments of the parties, the Court rules as follows:

I. Ruling

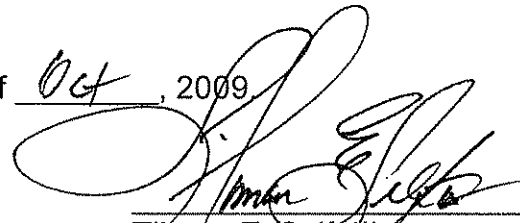
The parties do not dispute that HIPPA preempts the prior state law, which allowed and even encouraged *ex parte* communications with treating physicians, by requiring "reasonable notice and opportunity to object." Moreland, 284 Ga. at 733. However, the Court finds it to be better practice to not allow either party to interview Mr. Collins' treating physicians *ex parte*. As "a trial court[, this Court] enjoys broad discretion in controlling discovery and that '[h]istorically, it has been the policy of the

Georgia appellate courts to refuse to interfere with a trial court's exercise of its discretion in absence of abuse. *Porter v. WellStar Health System, Inc.*, 2009 WL 2025251, *2 (2009)(citation omitted).

Defendants have failed to show this Court any "significant cause [or reason]" that their attorneys should be able to contact Mr. Collins' physicians *ex parte*. Although the courts of this state differ as to whether to grant similar motions,¹ this Court believes that it is in the best interest of the underlying case that both parties should be prohibited from *ex parte* meetings with Mr. Collins' treating physicians. Plaintiffs have stated that they have not had any *ex parte* meetings with these physicians, and the Court will hold them to their word that no such meetings has or will take place.

ACCORDINGLY, Defendant's Motion for Qualified Protective Order is hereby DENIED, and the Court hereby prohibits both parties from any *ex parte* communication with Mr. Collins' treating physicians.

SO ORDERED this 9 day of Oct, 2009.



Tilman E. Self, III
Judge, Superior Courts of Georgia
Macon Judicial Circuit

¹ Both the Defendants and the Plaintiff attached the orders denying and granting similar motions in various Georgia trial courts.