

IN THE SUPERIOR COURT OF BALDWIN COUNTY  
STATE OF GEORGIA

MARY J. BURKHARDT,  
Plaintiff,

vs.

OCCONEE REGIONAL MEDICAL CENTER, INC.,  
Defendant.

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: CIVIL ACTION 07CV41329D  
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ORDER

The above-styled matter came to be heard on May 29, 2009, on Defendant's Motion to Require Plaintiff to Provide a Medical Authorization, or in the alternative, Motion for a Qualified Protective Order. Oconee Regional Medical Center orally adopted said motion.

This case arise from alleged medical malpractice resulting in the injury of Ms. Burkhardt. Defendants request this Court to authorize *ex parte* informal communications between defense counsel and Ms. Burkhardt's treating physicians.

Health Insurance Portability and Accountability Act (hereinafter "HIPAA") regulates the methods by which a physician may release a patient's health information, including oral and recorded medical records. *Moreland v. Austin*, 284 Ga 730, 670 S.E.2d 68 (2009). "The intent of HIPAA is to ensure the integrity and confidentiality of patients' information and to protect against unauthorized uses or disclosures of the information." *Northlake Medical Center, LLC v. Queen*, 280 Ga. App. 510, 634 S.E.2d

486 (2006) citing *In re Vioxx Products Liability Litigation*, 230 F.R.D. 473, 477 (E.D. La.2005). "HIPAA preempts Georgia law with regard to *ex parte* communications between defense counsel and plaintiff's prior treating physicians..." *Id.* at 733. "Under Georgia law, once a patient files suit and puts his medical condition in issue, his treating physician can then disclose his medical records and defendant's lawyer can informally contact those physicians and orally communicate with them about plaintiff's medical condition." *Id.* at 733.

In order for defense counsel to informally interview plaintiff's treating physicians, they must first obtain a valid authorization, or court order, or otherwise comply with the provisions of 45 CFR § 164.512 (e). *Id.* at 734. "[P]ermitt[ing] defense counsel to interview (the plaintiff's) prior treating physicians, but only after giving plaintiff notice and enabling her attorney's to be present when the physicians are interviewed, lies well within a trial court's discretion." *Id.* at 735.

Here, defense counsel gave Plaintiff notice and opportunity to object to *ex parte* communications between defense counsel and Ms. Burkhardt's prior treating physicians.

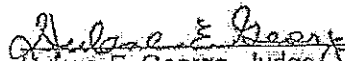
Therefore, the Court finds that Defendant's request does not contravene the intent of HIPAA and that Ms. Burkhardt's privacy interest can be adequately protected by a qualified protective order entered by this Court.

The Court further finds that Plaintiff has equal access to Ms. Burkhardt's treating physician and that it is not unreasonable for defense counsel to engage in *ex parte* communications; provided however, that Ms. Burkhardt's treating physicians consent to

participating in the *ex parte* communications.

Defendant's Motion for a Qualified Protective Order is hereby GRANTED. The Court is attaching a separate Qualified Protective Order that permits *ex parte* communications between counsel and Ms. Burkhardt's treating physicians subject to the conditions stated therein.

SO ORDERED this 11<sup>th</sup> day of June, 2009.

  
Hulane E. George, Judge  
Superior Court of Baldwin County  
Ocmulgee Judicial Circuit