

FILED

IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

09 MAY 22 AM 11:47

LINDA L. MILLER  
CLERK SUPERIOR COURT

LINDA PENDLEY, Individually and as  
Administrator of the Estate of  
Mark Pendley, Deceased  
Plaintiff,

vs.

CASMIR CHUKWUME OKORO, M.D.,  
SOUTHSIDE INTERNAL  
MEDICINE, P.C., SOUTHERN  
REGIONAL HEALTH SYSTEMS, INC.,  
and SOUTHERN REGIONAL MEDICAL  
CENTER, et al.  
Defendants.

CIVIL ACTION NO.  
2008-CV-5094-8

ORDER

The above-styled matter came to be heard on April 29, 2009, on Defendant's Casimir Chukwume Okoro, M.D. and Southside Internal Medicine, P.C.'s Motion to Require Plaintiff to Provide a Medical Authorization, or in the alternative, Motion for a Qualified Protective Order. Southern Regional Health System Inc. d/b/a Southern Regional Medical Center orally adopted said motion.

This case arises from alleged medical malpractice resulting in the death of Mark Pendley. Defendants request this Court to authorize *ex parte* informal communications between defense counsel and Mark Pendley's prior treating physicians. Plaintiff does not oppose oral communications between defense counsel and Mr. Pendley's prior treating physicians but requests to be present during the interview. Plaintiff is opposed to Defendants engaging in oral communications with any of Mr. Pendley's psychiatrists or psychologists.

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 (2008). "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]ermitting defense counsel to interview [the plaintiff's] prior treating physicians, but only after giving plaintiff notice and enabling her attorneys 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 Mark Pendley's prior treating physicians. Plaintiff's counsel does not object to the communications. However, plaintiff's counsel seeks to be present when the communications take place.

The Court finds that Defendants' request does not contravene the intent of HIPAA and that Mark Pendley'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 Mr. Pendley's treating physician and that it is not unreasonable for defense counsel to engage in *ex parte* communications; provided however, that Mr. Pendley's prior treating physicians consent to participating in the *ex parte* communications.

Defendants' Motion for a Qualified Protective Order is hereby GRANTED. The Court is attaching a separate Qualified Protective Order that permits *ex parte* communications between defense counsel and Mark Pendley's treating physicians subject to the conditions stated therein. Defense counsel are absolutely prohibited in engaging in any *ex parte* communications between defense counsel and Mr. Pendley's prior treating psychiatrists or psychologists.

SO ORDERED this 22 day of May, 2009.

  
MATTHEW O. SIMMONS  
Chief Judge, Superior Court  
Clayton Judicial Circuit

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