



24-9-40 pertaining to the release of medical information, the Court is guided by the reasoning and holdings provided in cases from other jurisdictions. In so doing, the Court finds that a HIPAA violation has occurred in the present case. However, the Court declines to impose the sanctions requested by the Plaintiff. The sanctions the Plaintiff beseeches the Court to impose are as follows: strike the cross-examination of Dr. Barnes; bar Mr. John Kennedy, counsel for the Defendant, and his firm of Hall, Bloch, Garland, & Meyer, LLP from further participation in the case; and strike the Defendant's answer. The Court finds such sanctions inappropriate and overly harsh.

Although the Court declines to impose the sanctions requested by the Plaintiff, the Court in no way condones defense counsel's action of speaking ex parte with the Plaintiff's treating physician or his adamant assertion that he will continue to engage in such practice in the future. The Court finds that although Judge Phillip S. Brown's comment to defense counsel in a prior case in the Superior Court of Bibb County regarding the effect of HIPAA on ex parte contacts with a treating physician was made in an indirect manner, such comment should have placed defense counsel on notice to reexamine HIPAA to determine whether ex parte contacts are permissible. Defense counsel should have been placed on further notice that his actions may have been in violation of federal law by the letter drafted by Plaintiff's counsel advising him against engaging in ex parte communications with the Plaintiff's treating physician, by the emerging case law from other jurisdictions, and most importantly by the language employed in HIPAA itself. The fact that Georgia law has not specifically addressed the issue or that it is common practice in Georgia for defense counsel to engage in ex parte communications with the plaintiff's treating physicians does not provide defense counsel

with a shield for protecting himself from the ramifications of federal law which are more stringent than Georgia law.

An individual's interest in protecting against the dissemination of his/her health information should not be squandered by defense counsel's interest in expediting discovery by engaging in the informal practice of ex parte communications with treating physicians. The need for discovery should not trample upon an individual's interest in the privacy of his/her health information unless discovery is pursued in compliance with HIPAA. Although there are many compelling arguments for and against the allowance of ex parte communications with treating physicians and although Georgia law, as it currently stands, arguably permits such ex parte communications in the civil context, the enactment of HIPAA appears to supersede any such arguments and Georgia law to the contrary. Defense counsel's action in the present case of engaging in an ex parte communication with one of the Plaintiff's treating physicians does not appear to comply with the tenets of HIPAA.

The Court hereby admonishes the Defendant and defense counsel to refrain from engaging in ex parte communications with the Plaintiff's treating physicians unless such communication is in compliance with HIPAA.

SO ORDERED this 31 day of March, 2005.



John R. Turner  
Judge/Superior Court of Jenkins County  
Ogeechee Judicial Circuit