

IN THE SUPERIOR COURT OF RICHMOND COUNTY  
STATE OF GEORGIA

EMMA CARTLEDGE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION FILE
	)	NO. 2007-RCCV-300
JOLENE R. MONTANO, M.D.;	)	
OBSTETRICS AND GYNECOLOGY	)	
ASSOCIATES OF AUGUSTA, P.C.; and	)	
OBSTETRICS AND GYNECOLOGY	)	
ASSOCIATES OF AUGUSTA II, LLC,	)	
	)	
Defendants.	)	

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

On September 25, 2007 this Court heard oral arguments regarding Defendants' Motion for Qualified Protective Order. In their motion, these defendants requested permission to conduct *ex parte* interviews with Emma Cartledge's health care providers pursuant to HIPAA, 45 C.F.R. § 164.512(e)(i). Upon review of the record and after considering the arguments made by attorneys for the relevant parties, the motion is hereby GRANTED. Counsel for defendants may conduct informal interviews with Emma Cartledge's health care providers without counsel for plaintiff being present. **However, plaintiff's health care providers are not required by virtue of this order to consent to such meetings as their participation is considered voluntary.** Defendants' counsel shall so advise any health care provider, and give them a copy of this order prior to any interview.

**CONTENTIONS OF THE PARTIES**

This is a complex medical matter in which plaintiff Emma Cartledge alleges the defendant health care providers failed to comply with the applicable standard of care resulting in physical injuries, loss of wages, and disability. She is also alleging punitive damages. Specifically, on May 4,

2005 plaintiff underwent a diagnostic procedure known as a D & C for problems associated with dysfunctional uterine bleeding and abdominal pain. During this diagnostic procedure, Dr. Montano, the physician who performed the procedure, also removed a fibroid which was attached to a "stalk" located within the uterus. According to medical records, plaintiff did well following the procedure.

However, several days later, on May 7, 2005 plaintiff returned to the hospital complaining of recent onset of abdominal pain. She was admitted to University Hospital for observation by Dr. Wade Blount. He was on-call for Dr. Montano's group at that time. Diagnostic testing ensued and, ultimately, exploratory surgery was recommended to determine the cause of the abdominal pain. On May 8, 2005 plaintiff underwent exploratory surgery which found a bowel perforation and a uterine perforation. The surgery was begun by Dr. Scott Burns, a gynecologic surgeon, during which he requested consultation of Dr. Lynn Tucker, a general surgeon. Dr. Tucker performed a temporary colostomy and resection of the bowel perforation. There was no treatment provided for the uterine perforation as none was necessary.

Plaintiff was released from the hospital on May 16, 2005. According to medical records, plaintiff did well, returning to the hospital on October 27, 2005 for successful reversal of the colostomy and incidental appendectomy performed by Dr. Lynn Tucker. During this operative procedure Dr. Montano was consulted by Dr. Tucker for a bleeding ovarian cyst that was found during the colostomy reversal. As a result of the consultation, plaintiff's left ovary and associated tube were removed by Dr. Montano. Plaintiff was discharged from University Hospital on November 2, 2005.

Plaintiff alleges that Dr. Montano was negligent in her performance of the initial diagnostic procedure on May 4, 2005. As a result of her alleged negligence, plaintiff contends she developed a uterine perforation and bowel perforation necessitating two subsequent surgical procedures including the temporary colostomy in May 2005 and the successful colostomy reversal in October 2005.

Defendants, on the other hand, deny plaintiff's allegations, contend that all care provided plaintiff was within the applicable standard of care, that plaintiff's condition was not the result of any negligent act on their part, and dispute plaintiffs' other allegations.

**SPECIFICS REGARDING ORDER GRANTING DEFENDANTS' MOTION**

This lawsuit was filed on April 27, 2007. In response, Defendants denied all of the material allegations. Since that time, discovery has ensued. Initially, plaintiff provided defendants with an HIPAA compliant authorization which specifically allowed *ex parte* meetings with plaintiff's health care providers. However, on July 6, 2007 she revoked all previous authorizations to obtain medical information from her health care providers. Since that time, plaintiff has steadfastly refused to allow defendants to conduct any informal, or *ex parte*, meetings with any of her health care providers.<sup>1</sup> Consequently, defendants requested permission through this court to pursue such meetings. After reviewing the briefs submitted by counsel and following a hearing conducted on September 25, 2007, this court hereby GRANTS defendants' request to conduct such meetings as follows.

This court finds that 45 C.F.R. § 164.512(e)(i) permits disclosure of protected health information, oral and written, from a "covered entity," such as a physician or other health care provider, in the course of any judicial proceeding in response to an order of a court. There is no requirement under federal law that plaintiff consent to the release of this information. Smith v. American Home Product Corp. Wyeth-Ayerst Pharmaceutical, 855A 2d 609, 624 (N.J. Super. Ct. Law Div. 2003); Bayne v. Provost, 359 F.Supp. 2d 234 (N.D.N.Y. 2005); Shropshire v. Laidlaw Transit, Inc., 2006 U.S. Dist. Lexis 52943 (E.D. Mich. 2006); McCloud v. Board of Dir. of Geary County Hosp., 2006 U.S. Dist. Lexis 58087 (D. Kan. 2006); Harris v. Whittington, 2007 WL 164031

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<sup>1</sup> Plaintiff also sought to prohibit defendants from conducting *ex parte* meetings with her past and present employers. However, at the September 25, 2007 hearing regarding these issues, plaintiff consented to such meetings. Therefore, to the extent defendants' motion for qualified protective order encompasses discussions with plaintiff's past and present employers to include discussions involving any medical or medically related issues, defendants' motion in that regard is hereby GRANTED.

(D. Kan. Jan. 19, 2007), Holmes v. Nightingale, 158 P.3d 1039, 2007 OK 15 (March 20, 2007, As Corrected May 30, 2007); Austin v Moreland, 2008 WL 4762052, \*3 (Ga.).

However, the court cautions that the information released and discussed must be relevant to the pending litigation as outlined in the Contentions of the Parties section above. In that regard, Emma Cartledge's physicians or other healthcare providers may provide records and discuss her relevant medical conditions and past, present, and future care and treatment with defense counsel. The individuals with whom the covered entities are permitted to conduct such informal interviews include only the following: Susan Carter Mulherin and Andrew W. Holliday. A preliminary list of health care providers with whom defense counsel may conduct *ex parte* interviews is attached as Exhibit "A." This list, however, does not limit defense counsel from later submitting an amended order to this court updating this list with additional health care providers with whom they may wish to conduct *ex parte* interviews.

Plaintiffs' counsel is also hereby prohibited from communicating with Emma Cartledge's treating physicians or other health care providers, orally or in writing, in an effort to prevent or thwart the requested interviews. Specifically, plaintiffs' counsel shall not act in a manner which would tend to intimidate the health care providers or cause them any fear of repercussions should they agree to defense counsel's request for the interviews permitted herewith.

Furthermore, defense counsel is prohibited from using any such discussions and/or health care information thus provided for any purpose other than as part of the present litigation. Additionally, defense counsel must return the protected health information to the healthcare providers or destroy the protected health information at the end of this litigation. 45 C.F.R. § 164.512(e)(1)(v). Defense counsel, however, is not required to produce any notes or memorandum associated with the interviews which constitute attorney work product.

Finally, within ten (10) days after conducting any informal meetings with any healthcare provider pursuant to this order, defense counsel shall inform Plaintiff's counsel in writing of the

person(s) with whom they spoke, the location of the meeting, and the date of the conference. Additionally, should any medical provider produce documentation not previously forwarded pursuant to request of the parties, this information will also be produced to plaintiff within the aforementioned ten (10) day period.

SO ORDERED this 1<sup>st</sup> day of April, 2008 *JGB*


  
JAMES G. BLANCHARD, JR., JUDGE  
SUPERIOR COURT OF RICHMOND COUNTY

Exhibit "A"

1. Dr. Rand Confer
2. Dr. Daryl Wiley and nurses/nursing assistants in his office who were present during examinations of plaintiff
3. Dr. Wade Blount and nurses/nursing assistants at University Hospital who were present during examinations of plaintiff
4. Dr. Dan Duggan
5. University Hospital nursing staff who cared for plaintiff while she was hospitalized in May 2005 and October 2005
6. Dr. David Bafford
7. Katie Taylor, RN [McDuffie Regional Medical Center]
8. Julie Hampton, EMT
9. Dr. Jeffrey Butterfield
10. Dr. John Bieltz and nurses/nursing assistants in his office who were present during examinations of plaintiff
11. Dr. Henry Alperin
12. Dr. Eugene Arrington
13. McDuffie Regional Medical Center nurses who cared for plaintiff while a patient there in 2004 [ER]
14. Dr. Burton Barmore

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served a copy of the foregoing upon the following:

James W. Howard, Esq.  
Sharon Effatt Howard, Esq.  
The Howard Law Firm, P.C.  
Suite 200, Kyleif Center  
1479 Brockett Road  
Tucker, GA 30084

by depositing said copies in the United States Mail with adequate postage affixed thereto to ensure proper delivery.

This \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
SUSAN CARTER MULHERIN