


STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MICHELLE GRANT, Plaintiff, v. HANNAH DEREMER, Defendant.	C/A No. 2018-CP-10-05321 PRIORITY MATTER SCRPC 40(h) NOTICE OF AND MOTION TO QUASH AND FOR A PROTECTIVE ORDER

PLEASE TAKE NOTICE that the undersigned, Laura J. Evans, Esquire and Mary B. Ramsay, Esquire, hereby move before this Honorable Court, on the tenth (10th) day after service hereof or as soon thereafter as counsel might be heard, to Quash the Subpoena pursuant to S.C.R.C.P Rule 45(c)(3)(A)(iii) and (iv) and for a Protective Order pursuant to S.C.R.C.P. Rule 26(c) on the grounds that the subpoena: (1) requires disclosure of information protected by stated and federal privacy laws; (2) imposes undue burden and expense; and (3) seeks information from a non-party that is seemingly irrelevant to the current action.

Background

This case arises out of an automobile accident that occurred on October 24, 2017, between the named parties. In her Answer filed with the Court, Defendant has admitted simple negligence.

On June 21, 2019, David S. Cobb, Attorney for the Defendant, issued a subpoena duces tecum to Lowcountry Orthopaedics, *a non-party*, requesting medical records pertaining to the treatment of Plaintiff and business records which allegedly exist between Lowcountry Orthopaedics and the Joye Law Firm, which represents Plaintiff, a copy of which is attached as **Exhibit A**. Specifically, the subpoena requests: (1) an itemized statement of all charges and copies of all payments made for Plaintiff's medical treatment, including payments made by the


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Joye Law Firm; (2) a list of all patients since January 1, 2012 in which the Joye Law Firm has referred patients to Lowcountry Orthopaedics and a list showing what amounts the Joye Law Firm paid for medical treatment rendered by Lowcountry Orthopaedics to each patient; (3) a copy of all contracts or agreements between Lowcountry Orthopaedics and the Joye Law Firm regarding payment of medical expenses incurred by Plaintiff; (4) a copy of all document referencing any contracts or agreements between Lowcountry Orthopaedics and Lowcountry Orthopaedic Surgery Center; (5) all documents generated by the Joye Law Firm requesting medical record for Plaintiff; and (6) all documents showing when Lowcountry Orthopaedics provided Plaintiff's medical records to the Joy Law Firm. Upon receipt of the subpoena, attorneys for Lowcountry Orthopaedics contacted Mr. Cobb and advised him that medical treatment was provided to Plaintiff subject to a letter of protection and medical records would be provided pursuant to HIPAA, but specially objected to Items 2, 3, and 4. The undersigned attorney made a good-faith effort to resolve the issues with Mr. Cobb, but was unable to do so, necessitating the filing of this Motion.

Legal Argument

Rule 45(c)(3)(A) states in relevant parts:

On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding ... production or inspection directed to a non-party, the court ..., shall quash or modify the subpoena if it... (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;...(iv) subjects a person to undue burden...

Additionally, if the discovery process threatens to become abusive or create a particularized harm to a litigant or third party, the trial judge may issue an order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.” Rule 26(c), SCRPC; *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994). If a

person requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the *opposing party* has the burden of showing the information sought is “relevant and necessary” to the case. *Hollman v. Woolfson*, 384 S.C. 571, 577–78, 683 S.E.2d 495, 498 (2009); *see also Laffitte v. Bridgestone Corp., supra; Hamm v. S.C. Pub. Serv. Comm’n, supra.* (emphasis added). In determining whether a protective order is necessary, the trial judge is required to weigh the factors of whether the information sought is “relevant and necessary” evidence against any particularized harm the opposing party may suffer. *Laffitte v. Bridgestone Corp., supra; Hamm v. S.C. Pub. Serv. Comm’n, supra.* In determining whether information is necessary, the party seeking the information must “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *Laffitte v. Bridgestone Corp.*, 674 S.E.2d at 163. The trial court must determine whether there are reasonable alternatives available to discover the information. *Id.*

1. Item 2 Requires Disclosure Of Information Protected By Stated And Federal Privacy Laws, Subjects Lowcountry Orthopaedics To Undue Burden, And Is Not Relevant Or Necessary To The Merits Of The Case.

Item 2 requests, “a list of *all patients* since January 1, 2012 in which the Joye Law Firm has referred patients to Lowcountry Orthopaedics and a list showing what amounts the Joye Law Firm paid for medical treatment rendered by Lowcountry Orthopaedics to each patient.” (emphasis added).

Both federal and state laws govern the privacy protection of medical records and require patient consent/authorization for disclosure. See Health Insurance Portability and Accountability Act (HIPAA) and Physicians’ Patient Records Act (S.C. Code Ann. § 44-115-10 *et seq.*)

Nonparty patients have a valid and legitimate expectation that their medical information will remain confidential. *Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 499 (2009).

Additionally, pulling every individual patient record since 2012 to determine whether they were referred by the Joye Law Firm, evaluating privacy protections, and redacting protected information would be unduly burdensome. It would also be unduly expensive, requiring Lowcountry Orthopaedics to pull away practice resources for a period of time or hire additional personnel to complete this task.

Finally, the protected, nonparty patient information sought by the subpoena is not relevant or necessary to this admitted liability automobile accident case. Accordingly, Lowcountry Orthopaedics requests this Court issue an Order modifying the subpoena and protecting nonparty patient information from disclosure.

2. Items 3 And 4 Request The Disclosure Of Proprietary Documents Protected Under Rule 26(C)(7).

The subpoena request "... (3)...all contracts or agreements between Lowcountry Orthopaedics and the Joye Law Firm regarding payment of medical expenses incurred by Plaintiff..." and "... (4)... all document referencing any contracts or agreements between Lowcountry Orthopaedics and Lowcountry Orthopaedic Surgery Center..."

Any contracts or agreements between Lowcountry Orthopaedics and the Joye Law Firm or Lowcountry Orthopaedic Surgery Center, if they even exists, are proprietary and therefore are protected under Rule 26(c)(7). Additionally, these proprietary documents are not relevant or necessary to the merits of the case.

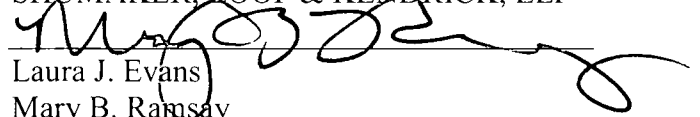
Accordingly, Lowcountry Orthopaedics requests this Court issue an Order modifying the subpoena and protecting all such contracts or agreements from disclosure.

Conclusion

For the foregoing reasons, Lowcountry Orthopaedics moves this Court for a an Order Quashing the Subpoena pursuant to S.C.R.C.P Rule 45(c)(3)(A)(iii) and (iv), and a Protective Order pursuant Rule 26(c) modifying the subpoena and protecting Items 2, 3, and 4 from disclosure.

Respectfully submitted,

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CHARLESTON 45402.1

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dcobb@turnerpadget.com

June 21, 2019.

Certified Mail

Lowcountry Orthopaedics

288 Tricom Street

North Charleston, South Carolina 29406

Re: Michelle S. Grant v. Hannah Deremer

Docket No.: 2018-CP-10-5321

TP File No.: 4000-2513

**SUBPOENA OF PROTECTED HEALTH INFORMATION
AND NOTICE TO PROVIDER OF SATISFACTORY
ASSURANCES**

Dear Sir/Madam:

We enclose our subpoena requesting you produce to us a copy of specific documents pertaining to Michelle S. Grant (Date of birth March 16, 1980). We also request a letter certifying the materials produced are a complete copy of the records requested from your file. We will reimburse your reasonable cost incurred for copying the documents; however, please notify us before copying if the cost exceeds \$150.00.

Please mail the documents before Thursday, July 11, 2019 to:

David Cobb
Turner Padget
Post Office Box 22129
Charleston, SC 29413-2129

Pursuant to 45 C.F.R. § 164.512(e) of the regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA"), we enclose "Satisfactory Assurances" that this firm sent written notice to Patient and Patient's attorney, which provided them with notice and sufficient information to object to the production by you of this protected health information. The time for filing an objection has passed and no objection has been filed, or all objections have been resolved in favor of producing the protected health information. Therefore, in

accordance with HIPAA, you may release Patient's medical records and other protected health information to this law firm.

We will mail a copy of this letter to Patient's attorney to provide Patient and Patient's attorney notice of the request for these records. If you have any questions or need additional information, please contact us. With kind regards,

TURNER PADGET



David S. Cobb

DSC/hak
enclosures

cc: Mark Bringardner (with enclosures)

NOTICE TO PROVIDER OF SATISFACTORY ASSURANCES

In regard to the attached subpoena for production of documents, this law firm provided written notice of the subpoena to the individual and/or the individual's attorney whose information is requested. The notice included sufficient information to permit the individual to raise an objection to your production of the requested information; however, the time for filing a motion to quash or an objection has elapsed, and either the individual and/or the individual's attorney did not file a motion to quash or an objection, or the court has resolved all filed motions to quash or objections and the disclosures sought in the subpoena are consistent with such resolution.

THESE STATEMENTS ARE MADE FOR PURPOSES OF COMPLIANCE WITH SECTIONS 261 THROUGH 264 OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191 (KNOWN AS THE "ADMINISTRATIVE SIMPLIFICATION PROVISIONS") AND MODIFICATIONS TO 45 CFR PARTS 160 AND 164 (THE "HIPAA PRIVACY RULE").

STATE OF SOUTH CAROLINA
ISSUED BY THE CHARLESTON COUNTY COURT OF COMMON PLEAS
FOR A LAWSUIT PENDING IN CHARLESTON COUNTY

MICHELLE GRANT,
 Plaintiff,
 v.
 HANNAH DEREMER,
 Defendant.

Docket No.: 2018-CP-10-5321

SUBPOENA

TO: Lowcountry Orthopaedics
 288 Tricorn Street
 North Charleston, South Carolina 29406

YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:	COURT ROOM:
	DATE AND TIME:

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME:
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XXX YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

- (1) an itemized statement of all charges to Michelle Grant and copies of all payments made for medical treatment rendered to Michelle Grant, including each payment made by the Joye Law Firm.
- (2) a list of all patients since January 1, 2012 in which the Joye Law Firm has referred the patient to Lowcountry Orthopaedics and a list showing what amounts the Joye Law Firm paid for any medical treatment rendered by Lowcountry Orthopaedics to each patient. The patient's name may be redacted to only the first initial and the first three letters of the last name.
- (3) a copy of all contracts or agreements between Lowcountry Orthopaedics and the Joye Law Firm regarding payment of medical expenses incurred by Michelle Grant.
- (4) a copy of all documents referencing any contracts or agreements between Lowcountry Orthopaedics and Lowcountry Orthopaedic Surgery Center.
- (5) all documents generated by the Joye Law Firm requesting medical records for Michelle Grant.
- (6) all documents showing when Lowcountry Orthopaedics provided Michelle Grant's medical records to the Joye Law Firm.

PLACE: Turner, Padgett, Graham & Laney, P.A. Post Office Box 22129 Charleston, SC 29413-2129	DATE AND TIME: on or before Thursday, July 11, 2019 at 5:00 p.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES:	DATE AND TIME:
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ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO

CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Cobb, Post Office Box 22129, Charleston, SC 29413-2129, (843) 576-2839

CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

TANSON

David S. Cobb (attorney for Defendant)

Date: June 21, 2019

PROOF OF SERVICE

SERVED	DATE	PLACE
		Lowcountry Orthopaedics 288 Tricom Street North Charleston, South Carolina 29406
SERVED ON: (Print Name)		MANNER OF SERVICE
Medical Records Custodian		Certified mail
SERVED BY (Print Name)		TITLE
Heather Hagen		Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on: 6/21/19
DATE

Heather Hagen
SIGNATURE OF SERVER
Turner, Padgett, Graham, and Laney
40 Calhoun Street, Charleston, SC 29401

Rule 45, South Carolina Rules of Civil Procedure, Parts c and d:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or
(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA:

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF _____)

Personally appeared before me, _____, who being duly sworn, deposes and says:

- 1. I am the Records Custodian for _____
(list practice/hospital name/business name)
- 2. I have reviewed the records in this office relative to _____
- 3. The attached documents are all of the records of this office as requested by the attached subpoena.
- 4. All of the attached documents are copies of records that are kept in the ordinary course of business by this office.

Records Custodian

SWORN AND SUBSCRIBED)

before me on _____)

Notary Public for South Carolina)

My commission expires: _____)