

IN THE CIRCUIT COURT FOR STATE OF TENNESSEE
20th JUDICIAL DISTRICT

IN RE: Qualified Protective Orders Pursuant to
Tenn. Code Ann. § 29-26-121(f)

20PJ

FILED
JUN 26 2020
BY RICHARD R. BOEKER, Clerk
Deputy

ORDER REGARDING QUALIFIED PROTECTIVE ORDERS

By Order 16PJ entered May 18, 2016, the Circuit Courts of the 20th Judicial District jointly established guidelines for all requests for a Qualified Protective Order (“QPO”) pursuant to TENN. CODE ANN. § 29-26-121 in a health care liability action. The undersigned courts hereby adopt these revisions in accord with the recent opinion by the Tennessee Supreme Court in *Willeford v. Klepper*, 597 S.W.3d 454 (Tenn. 2020).

Pursuant to the Supreme Court’s holding in *Willeford*, each court shall retain the discretion to grant or deny any petition filed pursuant to Tennessee Code Annotated Section 29-26-121(f) seeking to conduct *ex parte* interviews with non-party treating healthcare providers. The right to obtain such an order is permissive only. The petitioner shall have the burden to demonstrate that the patients’ non-discoverable health information will remain confidential if permission is granted to engage in *ex parte* interviews.

Should a court determine, in its discretion, that a QPO authorizing informal oral interviews with non-party treating physicians is appropriate, the petitioner shall notify the treating health care provider by letter, including a copy of the QPO, that participation in the interview is voluntary and that the provider has the right to refuse to the interview without recourse. Petitioner shall prepare an acknowledgment, bearing the style of the case, which must be provided and signed before any communication takes place. The acknowledgment shall contain the following language, in bold face font:

I HEREBY ACKNOWLEDGE THAT I AM NOT OBLIGATED TO PARTICIPATE IN ANY INTERVIEW OR DISCUSSION INVOLVING MY

PATIENT. PARTICIPATION IN ANY INTERVIEW CONCERNING A PATIENT IS STRICTLY VOLUNTARY. BY SIGNING THIS ACKNOWLEDGMENT, I AGREE TO VOLUNTARILY DISCUSS OTHERWISE PROTECTED HEALTH INFORMATION CONCERNING MY PATIENT, _____ (name of patient) _____ WITH _____ (name of lawyer(s)) _____.

Signature Date _____

This acknowledgment shall be filed with the court and served on all parties within three (3) days following its execution.

The subject matter of any ex parte interviews of non-party treating health care providers shall only be conducted for the purpose of obtaining relevant protected health information. See TENN. CODE ANN. § 29-26-121(f)(1). Relevant protected health information may include opinions as to the standard of care of any defendant, compliance with or breach of the standard, and causation of the alleged injury. See TENN. CODE ANN. § 29-26-121(f)(1).

In the event any opinion is disclosed during the interview concerning the standard of care of any healthcare provider, compliance with or breach of the standard, and/or causation of the alleged injury, then the party conducting the interview shall file a disclosure containing the substance of the opinions expressed. Said disclosure shall be signed by the person expressing the opinions and shall be filed with the court and served on all parties within thirty (30) days of the interview.

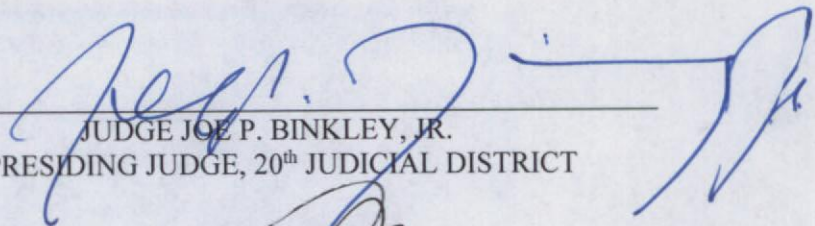
Dissemination of any protected health information obtained during the interviews is expressly limited to the litigation pending before the Court. The Defendant or Defendants who conducted the interview shall return to the healthcare provider or destroy any protected health information obtained in the course of any such interview, including all copies, at the end of the litigation. See TENN. CODE ANN. § 29-26-121(f)(1)(C)(i).

Nothing in this Order shall be construed to prohibit the parties from entering into an Agreed Qualified Protective Order that is compliant with TENN. CODE ANN. § 29-26-121.

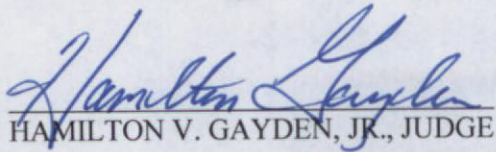
Nothing in this Order shall be construed to prohibit a party from questioning non-party individuals by use of formal discovery methods.

This Order is effective upon filing.

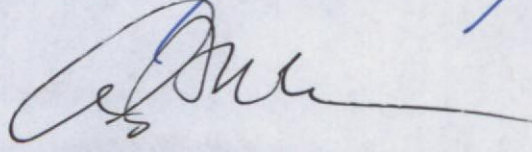
IT IS SO ORDERED.



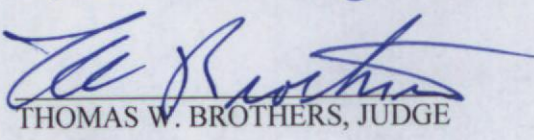
JUDGE JOE P. BINKLEY, JR.
PRESIDING JUDGE, 20th JUDICIAL DISTRICT



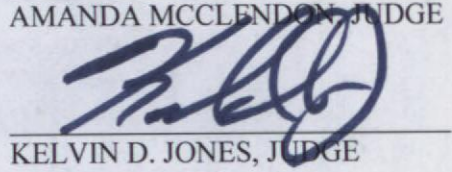
HAMILTON V. GAYDEN, JR., JUDGE



AMANDA MCCLENDON, JUDGE



THOMAS W. BROTHERS, JUDGE



KELVIN D. JONES, JUDGE