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G-Bar News



FROM THE BENCH

HIPAA, and a Civil Administrative Update

Most of you know the Federal Government recently implemented regulations under the 1996 Health Insurance Portability and Accountability Act (HIPAA) that will affect lawyers' ability to get medical records in litigation. These "Privacy Rule" regulations preempt State law dealing with medical records, so that a Subpoena issued to a medical provider will no longer require the provider to produce the records. Under the new regulations, in order to get medical records, lawyers must have either the written consent of the patient, or a Court Order. Written consent must contain a number of specific elements. See 45 C.F.R. § 164.508. Leatherwood lawyers Sam Outten and Sandy Miller saw the potential flood of Orders coming to the Court, and got together with several members of the Bar to come up with a standard form of an Order. The Order is short, as all Orders should be. Its use as a form will greatly simplify the Court's involvement in this process because the judges won't have to read each different Order to make sure it is correct under the regulations. On behalf of all the judges, I encourage each lawyer who must deal with HIPAA to use this form Order, which is

printed later in the newsletter, and to continue to follow HIPAA and how regulations under it are interpreted. Take a look at the current issue of *South Carolina Lawyer*, which contains an informative article on HIPAA by Greenville lawyers Ashley Abel and Robert Wood.

I would like to extend my thanks to the Greenville Bar for its enthusiastic participation in the new procedure for status conferences in jury cases. Your willingness to do this has cut the amount of time needed for status conferences to about one-fifth of what it was before. That saves us at least a full day of Court each month. More importantly, lawyers have considerable flexibility in setting trial dates, AND most cases are being set for trial about as early as they can be set under Rule 40. For those of you who have not seen it yet, it works like this. Each case is put on a status conference roster nine to ten months after filing of the Complaint, with a suggested trial week for the first term of common pleas after the case is twelve months old. Lawyers in each case are asked to confer among themselves to see if they can agree on the suggested trial week. If there is some scheduling problem, then the lawyers have the flexibility to choose any trial week within eight calendar weeks of the suggested date. When a trial week is chosen, one of the lawyers sends an email to

Lyndall Coker using a form on the Court Support website informing her of that date, and she puts it on the roster for trial. If there are any other problems that need to be addressed in a status conference, or if the lawyers cannot agree on a trial date in that eight-week window, then the lawyers can appear at the status conference as scheduled. On June 30, we held status conferences for all cases filed between July 12, 2002 and October 3, 2002. There were 226 cases on the original status roster, and 131 were set for trial. The rest settled before the status conference. Of those 131, 45 cases (35%) were set for trial during the suggested week, and another 46 cases (35%) were set for trial during the first six terms of Court after the case was twelve months old. Approximately 75% of those were set without the lawyers having to come to a status conference. Only 40 cases out of the approximately 2500 filed during that time period were set for trial more than six trial terms after the case was twelve months old, and these included all the complex medical malpractice, products liability, and other cases. The Greenville docket remains very current. Thanks to our outstanding Bar.

by: Honorable John Few, Judge
Thirteenth Judicial Circuit

163rd edition

July 2003

Upcoming Events:

August 14, 2003— We will have a casual, poolside social featuring split grilled lobster with hollandaise, aged steaks with mushroom sauces, and all the fixings including dessert. Open Bar. Cost is \$35 per person.

Greenville Country Club, Poolside. 6:30–9:00 p.m. Call 242-2001 today to reserve your place.

Inside this issue:

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CLE Opportunities

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

Plaintiff)
)
)
)
)
)
)
Defendant)

CONSENT ORDER

Plaintiff and Defendant recognize that the United States Department of Health and Human Services has issued final regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), governing the privacy of individually identifiable health information obtained, created, or maintained by certain entities, including healthcare providers. Under 45 C.F.R. §164.512(e), protected health information may be disclosed by healthcare providers and other such entities in the course of a judicial or administrative proceeding in response to the Order of a Court or administrative tribunal.

The parties agree that in the above-captioned civil action the Plaintiff’s medical condition is at issue. Accordingly, the Court hereby orders all entities who are or have been involved in the care and treatment of Plaintiff to provide to Defendant, and/or its agents, upon Defendant’s request, the following:

Copies of any and all medical records, including but not limited to, physicians’ notes, nurses’ notes, consultation reports, history and physicals, discharge summaries, lab reports, x-rays, bills, correspondence, patient questionnaires, E.R. reports, operative notes, and any other documents relating to the care, treatment, and medical conditions of the Plaintiff.

IT IS SO ORDERED.

Judge, Thirteenth Judicial Circuit

WE CONSENT:

Attorney for Plaintiff

Attorney for Defendant

Date: _____



Verdicts

Caption: R & R Realty Corp. v. Southern Warehouse Asso. LLC and Stephan Jax Asso., Inc. d/b/a Jax & Jax Auctioneers

Case No.: 2002-CP-23-3100

Attorney for Plaintiff(s): T. S. Stern

Attorney for Defendant(s): Keith Munson, Sara Day, James W. Fayssoux, Jr.

Cause of Action: Breach of contract

Verdict: Plaintiff, \$12,000 actual damages

Caption: Jeanne Gullic v. Linda Eastland

Case No.: 2002-CP-23-3170

Attorney for Plaintiff(s): Stephen Lewis

Attorney for Defendant(s): Phil Reeves, Denise Bassel-lieu

Cause of Action: Automobile accident

Verdict: Plaintiff, \$47,554.10 actual damages

Caption: Elmur Romos v. Bi-Lo, Inc.

Case No.: 2002-CP-23-3466

Attorney for Plaintiff(s): Theo Mitchell

Attorney for Defendant(s): Langdon Cheves

Cause of Action: False imprisonment

Verdict: Defendant

Caption: Knuckles v. Young

Case No.: 2002-CP-23-4786

Attorney for Plaintiff(s): Davida Mathis

Attorney for Defendant(s): Cary Hicks

Cause of Action: Automobile accident

Verdict: Plaintiff, \$784.25 actual damages

Caption: Dorothea Pendergrass v. Erin Cochran and

Marc Shomer

Case No.: 2002-CP-23-3829

Attorney for Plaintiff(s): Jeff Glick, Paul Rathe

Attorney for Defendant(s): Troy Tessier

Cause of Action: Automobile accident

Verdict: Plaintiff, \$29,000.00 actual damages

Caption: Sheldon B. Barefoot, individually and as GAL for Otha Ray Barefoot, a minor

Case No.: 2002-CP-23-2064

Attorney for Plaintiff(s): Hank Ehliès

Attorney for Defendant(s): William L. Duncan

Cause of Action: Damages

Verdict: Plaintiff, \$1,107.00 property damage, \$1.00 punitive damages

Caption: James C. Lewis, Jr. v. Jerry Lee Alexander

Case No.: 2002-CP-23-0303

Attorney for Plaintiff(s): John M. Read, IV

Attorney for Defendant(s): K. Lindsay Terrell

Cause of Action: Automobile accident

Verdict: Defendant

Terms of Court

USDC—Jury Pools; Sept. 2—Judge Anderson in Anderson; Sept. 4—Judge Seymour in Spartanburg; Sept. 8—Judge Herlong in Greenville

CIRCUIT COURT

August 11—CP Pickens Judge Baxley; CPNJ Judge Floyd; GS Greenville Judge Pyle

August 18—Judges in Chambers

August 25—CP Greenville Judge Few; GS Pickens Judge Floyd; CPNJ Judge Miller

September 1—GS Greenville Judge Hayes, Judge Few; CP Greenville Judge Floyd; CPNJ Judge Simmons

September 8—GS Greenville Judge Hayes, Judge Miller; CP Greenville Judge Few; CP Pickens Judge Floyd

September 15—CP Greenville Judge Hayes; CPNJ Judge Floyd

September 22—CPNJ Judge Hayes; CP Greenville Judge Few; GS Pickens Judge Floyd

FAMILY COURT

August 11—Judge K. Johnson, Judge Jenkins, Judge Bartlett, Judge Brown, Judge Konduros; Pickens—Judge A. Johnson

August 18—Judges in Chambers

August 25—Judge Jenkins, Judge Bartlett, Judge Brown, Judge Konduros; Pickens—Judge A. Johnson

September 1—Judge Jenkins, Judge K. Johnson, Judge Konduros, Judge Bartlett (3, 4, 5); Pickens— Judge A. Johnson

September 8—Judge Bartlett, Judge T. Brown, Judge Jenkins, Judge Konduros; Pickens—Judge A. Johnson

September 15—Judge Bartlett, Judge T. Brown, Judge K. Johnson, Judge Konduros; Pickens—Judge A. Johnson

September 22—Judge Bartlett, Judge T. Brown, Judge A. Johnson, Judge K. Johnson, Judge Konduros; Pickens— Judge Jenkins

Announcements

THANK YOU FROM JUDGE KITTREDGE

I appreciate so much the wonderful reception at the Westin Poinsett on June 24. You honor and humble me beyond words. The enduring friendships I have been fortunate to enjoy with so many of you made the evening especially meaningful to me and my family. I am privileged to be a member of our outstanding Bar.

THE TOMMY THOMASON AWARD

The Tommy Thomason Award was established by the Greenville County Bar Association in 1993 to honor a Greenville lawyer whom best exemplifies the wonderful qualities of Tommy Thomason:

***compassionate and sensitive to all people regardless of their station in life;**

***friendly, unassuming, humble with a warm, genuine and abiding faith in all people; *strong personal values, optimism and faith; *positive diplomacy that works to minimize conflict and resolve disputes in the least h o s t i l e manner;**

***unshakable integrity, coupled with an instinct for fairness;**

***dedicated to community interest, public service and improvement of the community;**

***loves the practice of law and pursues the practice as a service to people; *dedicated to the improvement of the legal system and justice for all people; and *widely respected and admired by peers for personal and professional achievement.**

There is no requirement that a recipient be selected each year; however if you have someone to nominate please send a written nomination to Jo Hackl at P. O. Box 728, Greenville, SC 29602-0728. Send all nominations in by September 1, 2003. The Tommy Thomason Award, if awarded this year, will be presented at a fall luncheon.

Advertisements

Office building available for rent at 10 Brookside Circle. Call Jim Sarratt or Bill Clarke at 271-4100.

Office space available; 202 West Stone Avenue. For details call 282-8575.

Office space for rent—historic Pettigru Area. Please call Kimberly Dunham or Stacy Greene at (864) 282-8686.

310 Mills Ave. Professional Center (condominium), 2305 Sq. Ft. on street level. Contact Bob Ray at 233-4555.

Office space available at 101 E. Camperdown Way. App. 800 sq. ft. including shared bathroom, reception area and conference space. Call Rebecca or Tammy at 864-370-9771.

Mediation Center Rental: Great location at 610 Grove Road (near Greenville Memorial Hospital). Have whole 1,000 square foot building to yourself. Calm, relaxing atmosphere. \$49 per day. Call Joe at 325-2660.

For rent: Single law office; 512 E. North Street, across from Bi-Lo Center. Contact Jim Calmes or Don Pilzer at 233-0663 for information.

Office space available: 33 Wade Hampton Blvd., Greenville. Separate office and secretarial areas, shared reception area and conference rooms. Ample, accessible parking. Available now. \$650 per month. Call Cindy at 271-6371.

Robinson, McFadden & Moore, P.C. is pleased to announce that two new associates have joined the firm in 2002. M. Kevin Garrison and L. Jefferson Davis, IV. Mr. Garrison practices in the areas of commercial and residential real estate, corporate law, banking law and commercial law. Mr. Davis practices in the areas of consumer bankruptcy, creditor rights, and commercial litigation. The firm is also pleased to be recertified as a member of Meritas.

Announcements (con't)

REMEMBER: The Attorneys' Lounge at the County Courthouse is available for use. It is located between Judge Pyle's office and Judge Stilwell's office.

The Legal Staff Professionals of Greenville will be sponsoring a seminar entitled "Probate Court Overview" on Friday, August 22, 2003, from 9 a.m. to 12:15 p.m. See insert for details.

LSPG meets on the third Wednesday of each month at the Greenville City Club from 12:30 to 1:30 p.m., and membership is open to all legal support staff—you need not be a member to attend a meeting. Our next meeting will be on August 20. Speaker will be Knox L. Haynsworth, III, Esq. with Brown Massey Evans McLeod & Haynsworth. For reservations, contact Darlene Dockins at 271-7410 or by email at darlene@gvl.haynsworth.com.

Greenville County Legal Auxiliary's Annual Membership Party

The Annual Membership Party of the Legal Auxiliary with spouses will be another Shrimp Boil at the Clement's pond, October 2, 6:30 p.m. This Shrimp Boil will be hotter with a Cajun flair and attitude; we will have Celebrity Waitstaff whom, if nothing else, will be entertaining. Tipping (to benefit Housewise Streetwise and Guardian ad Litem) will be encouraged. \$20 per person. For details, call Meta Armstrong at 268-7213 or e-mail her at arms7213@bellsouth.net.

The Legal Auxiliary this year is changing its focus. We will have a major Gala plus other fundraisers to benefit 2 organizations: our own Housewise Streetwise and Guardian ad Litem. We will also encourage the social and professional networking between women lawyers and spouses of lawyers.

CLE Seminars

Monday-Wednesday, August 4-6—Bridge the Gap, 19.25 credit hours, including up to 2.0 LEPR, USC Law School, Columbia

Thursday-Saturday, August 7-9—S. C. Trial Lawyers Convention

Friday, August 8—Evidence, USC Law School and 4 video sites

Tuesday, August 12—Advanced Legal Writing: Beyond Logic to Coherent Strength, 6.0 MCLE credit hours, Suggs & Kelly, Vista Room, Columbia

Friday, August 15—Tort Claims Act, 6.0 MCLE including up to 1.0 LEPR, USC Law School & 3 video sites

Thursday-Monday, August 21-25—Civil Court Mediation Training, 40 MCLE credit hours, including 3.25 LEPR, SC Bar Building

Friday, September 5—Federal Practice in the District of SC, USC Law School and 3 video sites

Friday, September 12—11th Annual Probate Bench/Bar,

USC Law School and 6 video sites

Friday-Saturday, September 12-13—NC/SC Construction Law Seminar, Wild Dunes, Charleston, SC, 8.5 MCLE credit hours including 1.0 LEPR

Friday, September 19—Hot Tips from the Best Domestic Law Practitioners, USC Law School and 6 video sites

Thursday, September 25—ALN—Annual Fall Estate Planning Practice Update, 3.0 MCLE credit hours including up to 3.0 specialty credit estate planning, SC Bar Building

Friday, September 26—Tort Update, USC Law School and 6 video sites

Friday, September 26—SCARLA Administrative Law Seminar, 6.0 MCLE credit hours, Riverbanks Zoo, Columbia, SC

For more information, contact the Bar's Continuing Legal Education Division at scbar-cle@scbar.org or 1-800-768-7787.