

[REDACTED]	
[REDACTED] <i>Plaintiffs,</i>	IN THE COUNTY COURT OF DALLAS COUNTY [REDACTED]
v.	
[REDACTED] HOSPITAL, ET AL.,  <i>Defendants.</i>	

**ORDER BARRING EX PARTE COMMUNICATIONS WITH TREATING PHYSICIANS**


On August 31, 2001, Plaintiffs filed a Motion for Protective Order Barring Ex-Parte Interviews Between Defense Counsel & Mrs. [REDACTED] Treating Physicians. Defendants requested an opportunity to brief the Court on that issue, and a hearing was therefore set on Plaintiffs' motion for September 5, 2001. At the hearing, all interested parties appeared and a record was made of the proceedings. Following the hearing, Plaintiffs presented additional authorities regarding the propriety of *ex parte* interviews between defense counsel and plaintiff's treating physicians.

As many of the authorities presented state, this issue is not settled in Texas. In this Court's opinion, however, the better-reasoned decisions are those that prohibit *ex parte* communications. In addition to all of the reasons set forth in the various cases, the mere fact that *ex parte* communications with Plaintiff's treating physicians are an issue in this case at all suggests the real-world significance of allowing or disallowing such communications. Although counsel for Defendants are to a person

highly competent and professional, whatever privileges<sup>1</sup> may remain between Mrs. [REDACTED] and her treating physicians, regardless how brief the treatment, are hers to assert, not Defendants.<sup>2</sup>

**IT IS THEREFORE ORDERED** that Defendants immediately cease communications with Mrs. [REDACTED] treating physicians or staff<sup>3</sup> regarding Mrs. [REDACTED] treatment at issue in this cause except as expressly authorized by Mrs. [REDACTED] the Texas Rules of Civil Procedure, or further order of this Court.

**IT IS SO ORDERED** this 5<sup>th</sup> day of September, 2001.



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<sup>1</sup>As the Court in *Perkins* wrote, "the problem is not whether the physicians' opinions are discoverable, the issue is the manner in which those opinions can be obtained." *Perkins v. United States*, 877 F. Supp. 33, 332 (E.D. Tex. 1995).

<sup>2</sup>Defense counsel, of course, have an ethical duty to zealously advocate Defendants' interests, and owe no such duty to Plaintiffs.

<sup>3</sup>That Defendants' employees might have privileged information of Mrs. [REDACTED] does not make that information any less privileged.