

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2018-CP-40-02545

RECEIVED

Aug 26 2020

SC Court of Appeals

Dr. Kaoru Pridgen,Appellant,

v.

Colonial Family Practice, LLC; Varsity Family Care Partners, LLC; Family Care Partners d/b/a Family Care Partners Management, LLC; Dr. Clay Lowder; Thomas W. Watson; and Dr. Gary R. Katz, Respondents.

RESPONDENTS COLONIAL FAMILY PRACTICE, LLLC, FAMILY CARE PARTNERS MANAGEMENT, LLC, DR. CLAY LOWDER, AND THOMAS W. WATSON'S MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION TO SEAL THE RECORD ON APPEAL

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Attorneys for Respondents Colonial Family Practice, LLC, Family Care Partners d/b/a Family Care Partners Management, LLC, Dr. Clay Lowder and Thomas W. Watson

On August 24, 2020, Appellant Dr. Kaoru Pridgen (“Appellant”) filed a Motion to Seal the Record on Appeal. Respondents Colonial Family Practice, LLC, Family Care Partners Management, LLC, Dr. Clay Lowder, and Thomas Watson (collectively, the “Colonial Respondents”) submit this memorandum as additional support for Appellant’s Motion.

In preparing the Colonial Respondents’ Final Brief for filing with this Court, on or about August 13, 2020, the undersigned counsel noticed that the Record on Appeal contained tax returns filed by Appellant and her husband, Arthur Hartzog, a non-party to this appeal, which include their social security numbers, dates of birth, and bank account information, which were not redacted from the record. Further, the Record on Appeal contains tax returns and bank account records of the Colonial Respondents, which also include these parties’ tax identification numbers and financial account numbers. In addition, the Record on Appeal contains documents exchanged by the parties in discovery which were marked “Confidential” and depositions of the parties with portions designated “Confidential” pursuant to a Consent Confidentiality Order entered by the lower court on November 5, 2018. *See* Confidentiality Order, attached hereto as Exhibit 1. All of these documents contain highly-sensitive financial and business operational information related to the Respondents’ medical practice.¹

As soon as the undersigned counsel noticed these issues with the Record on Appeal, the undersigned counsel contacted Appellant’s counsel seeking to protect the confidential information contained in the Record on Appeal. *See* Rule 41.2(c), SCRCPP (“The responsibility for ensuring that information is redacted or sealed rests with counsel and the parties.”). On the same day that the undersigned counsel contacted Appellant’s counsel, Appellant’s counsel called

¹ The only redactions to documents in the Record on Appeal were made by *Respondents* when submitting confidential information to the lower court in support of their Motions for Summary Judgment. For example, the Colonial Respondents redacted Appellant’s annual compensation information, bonus eligibility, and annual allowance information from her Employment Agreement when filing that document with the lower court pursuant to Rule 41.2, SCRCPP. *See* R. p. 0458, 0459, 460.

the Clerk of Court's office. Rule 41.2(d) and (e), SCRCF. The Clerk of Court immediately designated the Record on Appeal as non-public and removed it from public access on the Court's electronic filing system. Shortly thereafter, the Court directed the parties to file a Motion to Seal the Record on Appeal no later than August 24, 2020.

The Rules of Civil Procedure require a party filing documents in the public record to redact confidential information, including social security numbers, bank account numbers, and other sensitive information.² The notes to Rule 41.2 express a concern regarding the public's "[e]asy access to electronic court records" and resulting "privacy" issues. Therefore, "[p]arties preparing or filing documents are prohibited from filing documents which contain personal identifying information delineated in S.C. Code Ann. § 30-2-330(A)." Rule 41.2, SCRCF, at notes. "Parties should exercise caution and refrain from including any unnecessary personal identifying information in court filings so as to limit the necessity of redacting documents." *Id.* "Furthermore, parties should exercise caution in including other sensitive personal data in filings, such as medical records, employment history, individual financial information, proprietary or trade secret information, [etc.]." *Id.*

The Record on Appeal filed by Appellant on July 28, 2020, is filled with highly-sensitive personal identifying information, confidential documents, and trade secret information related to

² See Rule 41.2(a), SCRCF ("A person filing a document in paper or electronic format shall not include, or will redact where inclusion is necessary, the following personal identifying information. (1) "Social Security Numbers, Taxpayer Identification Numbers, Driver's License Numbers, Passport Numbers or Any Other Personal Identifying Numbers. If it is necessary to include personal identifying numbers in a document, the parties should utilize some other identifier. Parties shall not include any portion of a social security number in a filing. . . . (3) Financial Account Numbers, including Any Type of Bank Account Numbers, Personal Identifying Number (PIN) Code, or Passwords. If financial account numbers are relevant, only the last four digits of these numbers should be used. . . (5) Date of Birth. If a date of birth must be included, only the year of birth should be included.").

Respondents' business operations.³ The Colonial Respondents are informed and believe Appellant's Motion to Seal the Record on Appeal should be granted. At a minimum, all confidential documents contained within the Record should be sealed. Only non-confidential documents should be available for public view.

If only a portion of the Record on Appeal is sealed, the Colonial Respondents respectfully request the following pages be sealed pursuant to Rule 41.2(e), SCRCPC ("The request must specify the document and page number of the document that contains information to be redacted.").

- R. pp. 0479-0560 (highly sensitive Acquisition Agreement and exhibits); *id.* at R. p. 1023 (excerpt from Acquisition Agreement marked "Confidential"); *id.* at R. pp. 1025-1032 (schedule from Acquisition Agreement listing employees)
- R. pp. 0561-0566 (Varsity organizational chart, marked "Highly Confidential")
- R. pp. 0585-0635 and pp. 0712-0718 (excerpts from Dr. Lowder's deposition testimony with various portions designated confidential); pp. 1759-1962 (Dr. Lowder's deposition testimony with various portions designated confidential)
- R. pp. 0719-0734 and pp. 0750-0765 (Colonial and Family Care Partners meeting notes and Board of Director agendas marked "Confidential")
- R. pp. 0766-0855 (Dr. Katz's investment package marked "Confidential"); *id.* at pp. 2370-2451 (same)
- R. pp. 1020-1021; pp. 1047-1054 (excerpts from Watson's deposition testimony with various portions designated confidential); R. pp. 1499-1758 (Watson's deposition testimony with various portions designated confidential)
- R. pp. 1034-1035 (Varsity's document production marked "Confidential")
- R. pp. 1963-2169 (Dr. Katz's deposition testimony with various portions designated

³ Appellant acknowledged at the December 2019 hearing before the lower court that most of the documents submitted by the parties in support of and opposition to the motions for summary judgment (now on appeal) contain confidential information. R. p. 170, lines 6-12 (Appellant's counsel stating: "[M]uch of the evidence has been distinguished as confidential. I went on the side of caution, fearing that if I was trying to put these [documents] into the record, I was going to inadvertently put some of the confidential information in the –filing. So I've put them on a disk for the Court, and I have also printed a copy for the Court as well.").

confidential)

- R. pp. 2170-2289 (Dr. Carlos Soto's deposition testimony with various portions designated confidential)
- R. pp. 2452-2532 (non-party Dr. Baker's investment package)
- R. pp. 2533-2551 (non-party Dr. Baker's Employment Agreement)
- R. pp. 2568-3092; pp. 3722-3799 (Colonial and Family Care Partners' document production marked "Confidential")
- R. pp. 3098-3102; pp. 3638-3721 (Varsity's document production marked "Confidential")
- R. pp. 3109-3118; pp. 3203-3208; pp. 3212-3217; p. 3219; pp. 3225-3230; p. 3269; p. 3271; pp. 3273-3274; p. 3284; p. 3286 (confidential financial information exchanged by the parties in discovery)
- R. pp. 3289-3610 (Appellant's tax filings marked "Confidential" by Appellant)

For the reasons set forth above, Appellant's Motion to Seal the Record on Appeal should be granted.

Respectfully submitted,

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Attorneys for Respondents Colonial Family Practice, LLC, Family Care Partners d/b/a Family Care Partners Management, LLC, Dr. Clay Lowder and Thomas W. Watson

August 26, 2020.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word “CONFIDENTIAL” on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney¹ who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

¹ The attorney who reviews the documents and certifies them to be CONFIDENTIAL must be admitted to the Bar of at least one state but need not be admitted to practice in the South Carolina Bar and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to the certification.

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the Parties or counsel for the Parties or any other persons identified below (¶ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

b. **Limited Third Party Disclosures.** The Parties and counsel for the Parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment B hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

(1) counsel and employees of counsel for the Parties who have responsibility for the preparation and trial of the lawsuit;

(2) Parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;

(3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(4) consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the Parties or counsel for the Parties to assist in the preparation and trial of the lawsuit;

(5) persons deposed under Rule 30, of the South Carolina Rules of Civil Procedure in the above-captioned action, provided that such deponent is not permitted to retain a copy of any document(s) shown and/or marked as an exhibit in the deposition which has been designated as confidential under this Order; and

(6) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the Parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “copies”), of documents designated as confidential under this Order or any portion of such a document, shall be immediately affixed with the designation “CONFIDENTIAL” if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Inadvertent Disclosures.**

a. The provisions in Paragraph 6 of this Order addressing the inadvertent production of certain documents and information apply retroactively to all productions of documents and information by the Parties occurring since the commencement of this action, including any productions of documents and information occurring prior to the entry of this Order.

b. Inadvertent production during the litigation of the Parties' dispute of any documents or information that would be protected from disclosure pursuant to the attorney-client privilege, the work-product doctrine or any other relevant privilege or doctrine shall not constitute a waiver of the applicable privilege or doctrine.

c. Subject to Paragraph 6.d below, if inadvertently or mistakenly produced documents or information are subject to a claim of privilege or other immunity, upon written request made by the producing party within twenty-one (21) days of discovery of such inadvertent or mistaken production, the documents or information for which a claim of inadvertent production is made, including all copies, shall be returned or destroyed by the receiving party within fourteen (14) days of such request, with the receiving party providing by that deadline a written certificate of destruction where that option is elected or is necessary. Destruction for purposes of this provision includes the deletion or erasure of any electronically stored copies of the subject documents or information. In the event information from the subject documents or information has been incorporated by the receiving party into other documents or data compilations, such documents or data compilations must either be destroyed or redactions made.

d. If the receiving party objects in writing to the return or destruction of any documents or information within the fourteen (14) day period described above, then the

obligation to return or destroy the documents or information is stayed. The producing party may then move the Court for an order compelling the return or destruction of such documents or information. Pending the Court's ruling, a receiving party may retain the inadvertently or mistakenly produced documents or information, but shall sequester written documents in a sealed envelope and, for electronically stored documents or information, shall take reasonable steps to designate such documents or information to be subject to a privilege dispute. The receiving party shall not make any use of any documents or information that are the subject of a request for return or destruction based on a claim of privilege unless and until either (i) the Court denies any motion to compel that has been filed, or (ii) the producing party fails to file a motion to compel within fourteen (14) days of receipt of a written objection from the receiving party to the claim of privilege.

e. In the event the receiving party disclosed the inadvertently produced documents or information prior to notification of a claim of privilege by the producing party, then the receiving party shall take reasonable steps to retrieve the documents and information.

7. Filing of Confidential Materials. In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Rule 41.1, SCRCR, or such other rule or procedure as may be applicable. Absent

extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The Parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Rule 41.1, SCRCF.

8. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

9. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 9.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

10. Treatment on Conclusion of Litigation.

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return or Destruction of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (§5.d.) shall be returned to the producing party or destroyed unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the Parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. If documents are destroyed rather than returned, the destroying party shall confirm his/her/its destruction of the documents to the producing party.

Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

11. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the Parties shall have been given notice and an opportunity to be heard on the proposed modification.

12. **No Judicial Determination.** This Order is entered based on the representations and agreements of the Parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

13. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

IT IS SO ORDERED.

The Honorable Robert E. Hood
Chief Administrative Judge for the 5th Judicial Circuit

_____, South Carolina
_____, 2018

We so move and consent:

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s/ Shannon M. Polvi
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Attorneys for Plaintiff Dr. Kaoru Pridgen

ATTACHMENT A
ACKNOWLEDGMENT OF UNDERSTANDING
AND AGREEMENT TO BE BOUND

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
		Civil Action No. 2018-CP-40-02545
Dr. Kaoru Pridgen,)	
)	
Plaintiff,)	
v.)	
)	
Colonial Family Practice, LLC; Varsity)	
Healthcare Partners d/b/a Varsity Healthcare)	
Partners UGP II, LLC; Varsity Healthcare)	
Partners GP II, LP, Varsity Healthcare)	
Partners II, LP, Varsity Health Care Partners)	
II-A, LP; Family Care Partners d/b/a Family)	
Care Partners Management, LLC; Dr. Clay)	
Lowder; Thomas W. Watson; and Dr. Gary)	
R. Katz,)	
Defendants.)	

The undersigned hereby acknowledges that he or she has read the Confidentiality Order dated _____, in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the South Carolina circuit court in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature



Richland Common Pleas

Case Caption: Kaoru Pridgen Dr vs Colonial Family Practice Llc , defendant, et al

Case Number: 2018CP4002545

Type: Order/Consent Order

So Ordered

s/ R.E. Hood #2164

THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Clifton B. Newman, Circuit Court Judge

Case No. 2018-CP-40-02545

Dr. Kaoru Pridgen,Appellant,

v.

Colonial Family Practice, LLC; Varsity Family Care Partners, LLC; Family Care Partners d/b/a Family Care Partners Management, LLC; Dr. Clay Lowder; Thomas W. Watson; and Dr. Gary R. Katz, Respondents.

CERTIFICATE OF SERVICE

I certify that I have served **Respondents Colonial Family Practice, LLC, Family Care Partners d/b/a Family Care Partners Management, LLC, Dr. Clay Lowder and Thomas W. Watson's Memorandum in Support of Appellant's Motion to Seal the Record on Appeal** on all counsel of record by e-mailing a copy of said documents on August 26, 2020 to counsel at the following e-mail addresses:

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s/ Victoria M. Cordoni
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August 26, 2020.



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VIA E-FILING ONLY:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *Dr. Kaoru Pridgen v. Colonial Family Practice, LLC, et. al.*
Case No. 2018-CP-40-02545
AR File No: 000020-004647

RECEIVED

Aug 26 2020

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter is Respondents Colonial Family Practice, LLC, Family Care Partners d/b/a Family Care Partners Management, LLC, Dr. Clay Lowder and Thomas W. Watson's Memorandum in Support of Appellant's Motion to Seal the Record on Appeal.

By copy of this letter, I am serving all counsel of record with the memo and as set forth in the enclosed Proof of Service. Please call me if you have questions.

Sincerely,

s/ Lyndey R. Z. Bryant

Lyndey R. Z. Bryant

LRZB/vmc

Enclosures

cc: Shannon M. Polvi, Esquire (via e-mail only)
Jennifer K. Dunlap, Esquire (via e-mail only)
Jeffrey Lehrer, Esquire (via e-mail only)