

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ELIZABETH DENISE CALDON, \*  
 \*  
 Plaintiff, \*  
 \*  
 v. \* Civil Action No.  
 \* 2009-CV-165267  
 \*  
 BOARD OF REGENTS OF THE \*  
 UNIVERSITY SYSTEM OF GEORGIA, \*  
 \*  
 Defendant. \*

DEFENDANT'S RESPONSE TO PLAINTIFF'S  
MOTION TO LIFT PROTECTIVE ORDER

Defendant Board of Regents ("Defendant") files this Response to Plaintiff's Motion to Lift Protective Order and shows this Court as follows:

I. INTRODUCTION

Plaintiff Elizabeth Denise Caldon ("Plaintiff") brought a claim against Defendant under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4. During the course of discovery, the parties jointly submitted a Consent Protective Order to protect against the disclosure of confidential and/or privileged information. On September 22, 2009, the Court signed the Consent Protective Order. After lengthy and extensive discovery, including numerous depositions, Defendant moved for summary judgment. On June 24, 2010, the Court granted Defendant's Consent Motion to File Original Depositions and Excerpts Under Seal.

On August 16, 2010, the Court granted Defendant's Motion

for Summary Judgment. On July 13, 2011, the Georgia Court of Appeals affirmed the grant of summary of judgment. Plaintiff now seeks to lift the protective order so that she may reveal confidential information disclosed during discovery. Defendant strenuously objects to Plaintiff's Motion to Lift Protective Order ("Plaintiff's Motion"). Because Plaintiff fails to provide any legal basis for lifting the protective order, her Motion should be denied.

## II. ARGUMENT AND LEGAL AUTHORITY

Plaintiff, through her former counsel, agreed to the terms of the Consent Protective Order. In the Consent Protective Order, the parties agreed not to disclose or use information relating to and documents containing sensitive, private, personal, and/or confidential information concerning Plaintiff and/or Defendant's employees and or students except as appropriate and relevant in court proceedings in this case or in related litigation involving Plaintiff and Defendant.

It appears that Plaintiff would like to continue to harass and embarrass current and former Macon State College administrators, including former president, Dr. David Bell. Although Plaintiff unsuccessfully sought Dr. Bell's medical records, the depositions taken in the case include numerous pages of testimony about his health, medical appointments, and treatment. As previously recognized by this Court, such

information is protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320 et seq., and its regulations, 45 C.F.R. 160.102 et seq. Dr. Bell, who is not a party to this action, has never waived his right to privacy under HIPAA or any other law.

Under the terms of the Consent Protective Order, good cause must be shown to alter the Protective Order with out both parties' consent. In Plaintiff's Motion, she fails to provide any legal justification for revoking the Consent Protective Order. The fact that Plaintiff's case has been dismissed does not change the confidential and/or privileged nature of information disclosed during discovery. Therefore, altering or revoking the Consent Protective Order would improperly violate Dr. Bell's right to privacy. See Baker v. Wellstar Health Sys., Inc., 288 Ga. 336, 337 (2010) (noting that HIPAA requires that a party seek an appropriate qualified protective order before protected health information may be disclosed in a judicial proceeding).

### III. CONCLUSION

For all of the foregoing reasons, Defendant respectfully request that the Court deny Plaintiff's Motion.

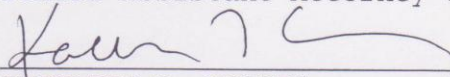
Respectfully submitted, this 10th day of August, 2011.

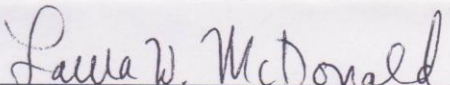


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Please serve:

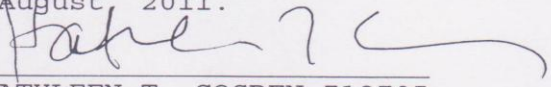
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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2011, that I served the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO LIFT PROTECTIVE ORDER**, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States mail, properly addressed, upon:

Denise Caldon  
1055 Ashford Chase Court  
Macon, Georgia 31210-8027

This 11th day of August, 2011.

  
KATHLEEN T. GOSDEN 712705  
Senior Assistant Attorney General  
Attorney for Defendant

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