

**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA COMPOSITE MEDICAL BOARD,	:	
	:	
	:	
Petitioners,	:	Docket Nos.:
	:	OSAH-CSBME-PHY-1444768-33-Malihi
v.	:	
	:	
NEDRA DODDS, M.D.,	:	
	:	
	:	
Respondent.	:	
	:	
	:	
	:	
	:	

ORDER

On April 8, 2014, Adam Murphy of CBS News requested the right to broadcast, record, and/or photograph any hearings in the present matter, including the evidentiary hearing. Petitioner filed a Response on April 10, 2014, and Respondent filed a Motion in Opposition on April 17, 2014. Mr. Murphy filed a reply on April 24, 2014. Both Petitioner and Respondent assert that the bulk of the evidence at the hearing will involve evidence and testimony surrounding the care and treatment of four patients, which gave rise to the present disciplinary action against Respondent. For the reasons given below, Mr. Murphy's Rule 43 Request is granted in part and denied in part.

As this case involves discipline of a licensee by the Georgia Composite Medical Board, the provisions of Code Section 43-34-8 apply. The law specifies:

In any hearing to determine a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter, any record relating to any patient of the licensee, certificate holder, permit holder, or applicant shall be admissible into evidence, regardless of any statutory privilege which such patient might otherwise be able to invoke. In addition, no such patient may withhold testimony bearing upon a licensee's, certificate holder's, permit holder's, or applicant's fitness to practice pursuant to this chapter on the ground of privilege between such licensee, certificate holder, permit holder, or applicant and such

patient. Any testimony or written evidence relating to a patient of a licensee, certificate holder, permit holder, or applicant or to the record of any such patient shall be received by the board in camera and shall not be disclosed to the public.

O.C.G.A. § 43-34-8(e) (emphasis added). Because much of the hearing will involve patient treatment information that may not be disclosed to the public, unrestricted grant of the Rule 43 Request would be unlawful without more.

Given the purpose of the privacy protection of Code Section 43-34-8(e), patients (or their representatives) may waive the evidentiary restrictions on use of their records. Specifically, the code provision is intended to protect patient privacy in circumstances where the patient is forcibly deprived of a statutory privilege. The in camera receipt of all records and evidence related to the treatment of patients strikes a balance between protecting the privacy needs of patients and protecting the need to conduct effective disciplinary hearings. Thus, where a patient waives the right either (1) in writing or (2) by putting his or her “care and treatment or the nature and extent of his [or her] injuries at issue in any civil or criminal proceeding,” *King v. State*, 272 Ga. 788, 793 (2000), the waiver eliminates the need to receive all such treatment records in camera. Here, one of the patients, Ms. Jenkins, waived her right to privacy with regard to her medical treatment to the extent that she placed her treatment by Dr. Dodds at issue in a civil action currently pending in the State Court of Cobb County, Georgia. There is no evidence that the remaining three patients, whose care and treatment are of concern in this case, have waived their right to privacy in writing or otherwise.

Nevertheless, regardless of whether there are patient waivers, there may be portions of the hearing that do not implicate the restrictions of Code Section 43-34-8(e). Specifically, the provision restricts only the public presentation of evidence of a patient’s medical treatment, which does not include testimony relating to Respondent’s qualifications, expert testimony and

the like, or opening and closing arguments, which are not evidence. *Bell v. State*, 294 Ga. 443, 443 (2014). In relation to these portions of the proceeding, the undersigned looks to Uniform Superior Court Rule 22 (“Rule 22”) to determine whether and to what extent to grant an OSAH Rule 43 request. Ga. Comp. R. & Regs. 616-1-2. Rule 22 dictates that “[a] request for installation and use of electronic recording, transmission, videotaping or motion picture or still photography of any judicial proceeding be evaluated pursuant to the standards set forth in O.C.G.A. § 15-1-10.1.” Ga. Unif. Super. Ct. 22.

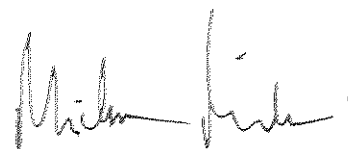
Code Section 15-1-10.1 sets standards for granting requests for electronic media coverage of judicial proceedings by considering “the impact on the public interest and the rights of the parties in open judicial proceedings, the impact upon the integrity and dignity of the court, and whether the proposed activity would contribute to the enhancement of or detract from the ends of justice.” O.C.G.A. § 15-1-10.1(a). Here, considering the factors listed in the statute, this Court finds that allowing electronic media coverage of portions of the hearing would “increase public access to the courts and openness of judicial proceedings” without impacting the integrity, dignity, or administration of the Court. O.C.G.A. § 15-1-10.1(b), (e); *see Morris Comm., LLC v. Griffin*, 279 Ga. 735, 737 (2005) (presence of camera will generally increase openness); *WALB-TV, Inc. v. Gibson*, 269 Ga. 564, 566 (1998) (abuse of discretion to find stationary and silent camera disruptive). Georgia law favors public trials that are open to the press and public. *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 579, 580-81 n.1 (1982). In general, medical licensing cases are of concern to the public, given the potential for danger to the public of the continued licensure of dangerous practitioners. *See Geiger v. Jenkins*, 316 F. Supp. 370, 373 (1970), *aff’d*, 401 U.S. 985 (1971) (“The right to practice medicine is a conditional right which is subordinate

to the state's power and duty to safeguard the public health"). Here, in light of the seriousness of the allegations, there is a particularly strong need for an open courtroom.

Accordingly, this Court will allow Mr. Murphy to video and audio record all portions of the hearing not involving the medical treatment of the patients. In addition, Mr. Murphy and his crew may be present and electronically and photographically record those portions of the hearing covered by Code Section 43-34-8(e) for which a patient has waived his or her right to privacy, either in writing or to the extent he or she has put his or her care and treatment at issue in a civil suit.

All set up and use of electronic equipment must be done in accordance with Rule 22 to minimize any interruption of or distraction from court proceedings. In the absence of patient approval, all recording equipment must be promptly turned off or removed from the courtroom for closed portions of the hearing where a patient has not waived the right to the privacy of his or her medical treatment.

SO ORDERED, this the 30th day of April, 2014.



MICHAEL MALIHI, Judge