

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13733
C/cb

_____AD3d_____

Submitted - December 20, 2006

STEPHEN G. CRANE, J.P.
WILLIAM F. MASTRO
FRED T. SANTUCCI
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO, JJ.

2006-02587

DECISION & ORDER

Colin McGroarty, etc., et al., appellants, v Long
Island College Hospital, et al., respondents, et al.,
defendants.

(Index No. 14443/99)

Douglas & London, P.C. (Arnold E. DiJoseph III and Norman I. Lida of counsel), for
appellants.

Aaronson, Rappaport, Feinstein & Deutsch, LLP, New York, N.Y. (Steven C.
Mandell of counsel), for respondents.

In an action to recover damages for medical malpractice, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Steinhardt, J.), dated January 12, 2006, as granted the motion of the defendants Long Island College Hospital, Thomasena Ellison, Sanjvan Patel, and Eli Koenig, in effect, to amend so much of an order of the same court dated October 6, 2005, as struck the answers of the defendants Thomasena Ellison, Sanjvan Patel, and Eli Koenig, unless they provided certain discovery within 30 days, to provide that the answers would not be stricken.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly granted the respondents' motion, in effect, to amend so much of an order dated October 6, 2005, as conditionally struck the answers of the defendants

February 6, 2007

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Thomasena Ellison, Sanjvan Patel, and Eli Koenig (hereinafter the defendants), unless they provided certain discovery within 30 days, to provide that the answers would not be stricken. The respondents established that they timely and substantially complied with the conditional portion of the order by submitting proof that the discovery requested did not exist or had already been provided to the plaintiffs (*see Whitfield v State of New York*, 28 AD3d 542, 543; *Bivona v Trump Mar. Casino Hotel Resort*, 11 AD3d 574, 574-575; *Barlow v Werner Co.*, 295 AD2d 381).

CRANE, J.P., MASTRO, SANTUCCI, LIFSON and ANGIOLILLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court