

MDPC _____
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MDNID _____

**SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY: MEDICAL MALPRACTICE PART**

PRESENT: HON. _____
-----x

Preliminary Conference Order

Plaintiff(s),

- against -

Index Number: _____

Defendant(s).

Date RJI Filed: _____

APPEARANCES:

Plaintiff _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Defendant _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Defendant _____
Firm/Attorney of Record: _____
Assigned Attorney: _____
Address: _____
Email: _____
Telephone: _____ Fax: _____

Defendant _____
Firm/Attorney of Record: _____
Assigned Attorney: _____
Address: _____
Email: _____
Telephone: _____ Fax: _____

Following a Preliminary Conference, it is hereby **ORDERED** that disclosure shall proceed as follows:

(1) **Insurance Coverage:** (a) If not yet done, defendant shall disclose in writing the existence and contents of any insurance agreement, including umbrella or excess coverage, as described in CPLR §3101(f) within 30 days of the date of the Preliminary Conference Order.

(2) **Bill of Particulars**

(a) A demand for a Bill of Particulars, if not already served, shall be served by defendant(s) within 15 days of the date of the Preliminary Conference Order.

(b) A Bill of Particulars shall be served by plaintiff within 30 days of service of a demand (see CPLR §3042).

(c) If an affirmative defense or counterclaim is asserted, a Demand for a Bill of Particulars or Interrogatories shall be served within 30 days of the date of the Preliminary Conference Order. A response to such demand shall be served within 30 days of service of the demand.

(d) A Supplemental Bill of Particulars may be served within 30 days of completion of the last party deposition.

(e) Prior to the filing of the Note of Issue, an Amended Bill of Particulars may be served once as of course pursuant to CPLR§3042(b). Post Note of Issue filing, an Amended Bill of Particulars requires motion practice within 60 days of completion of the last party deposition.

(3) Medical Report(s), Record(s) and Authorization(s):

Within 30 days of the date of the Preliminary Conference Order, a duly executed written authorization(s) shall be furnished by plaintiff for the following written and/or electronic items: (Check as apply)

- Physician and/or hospital, Pharmacy and/or autopsy records, and where appropriate authorizations for HIV, mental health and alcohol records;
- Hospital Chart;
- Billing records;
- Employment and attendance records for a three (3) year period preceding the date of injury/death;
- No-fault file;
- Diagnostic tests and films and/or pathology slides;
- Collateral source authorizations / Worker's Comp records;
- W2 and/or tax return records for self employed individuals (if there is a loss of wages claim) for a three (3) year period preceding the date of injury/death;

Other (specify) _____

Within 30 days of the date of the Preliminary Conference Order, defendants shall provide to plaintiff: (Check as apply)

- Index/Table of Contents for the Rules and Regulations of the hospital department(s) involved in the lawsuit for the applicable cause of action;
- Emergency Room Log (redacting names of patients other than plaintiff), where applicable;
- Operating Room Log (redacting names of patients other than plaintiff);
- Transcripts of the statements made by the individually named defendants before the Mortality and Morbidity Committee, the Quality Review Committee or any like committee, subject to an in camera review;
- Identity and employment status of individuals whose signatures, initials or otherwise are marked by plaintiff on a copy of the hospital record;
- Copies of any statements of plaintiff in defendant's possession;

____ Other (specify) _____

Within fourteen (14) days of the date of the Preliminary Conference Order, **plaintiff shall provide, if requested by defendants and at defendants' cost**, copies of all physician, hospital, pharmacy and autopsy records, and where appropriate HIV, mental health and alcohol records, and diagnostic tests and films and pathology slides, as set forth above.

(4) Physical Examination(s) of Plaintiff by Defendant(s) Physicians:

(a) Examination(s) of plaintiff shall be held between the Compliance Conference and the filing of the Note of Issue.

(b) Pursuant to 22 NYCRR §202.17(b), at least 20 days before such examination, plaintiff shall serve upon all other parties copies of the medical reports of those physicians who have previously treated or examined him/her:

(c) A copy of the examining physician's report shall be furnished to all parties by defendant(s) _____ within 30 days of the examination.

(5) Depositions:

(a) Examinations Before Trial shall be conducted remotely, or if so agreed by the parties, in person at a mutually agreed location and time, as follows:

The depositions of plaintiff(s) shall be held no more than 90 days from the date of the Preliminary Conference Order or plaintiff (s) may face dismissal of the complaint (CPLR §3126). On the date of the scheduled deposition, the witness and the court reporter shall appear remotely or at the designated location, at the designated time unless all parties agreed to an EARLIER deposition date.

If any defendant fails to appear at plaintiff(s) deposition within the said 90 days, that defendant will be deemed to have waived the right to depose plaintiff(s).

Plaintiff(s) deposition shall be held on or before _____.

Defendants may not adjourn the deposition date(s) of plaintiff(s) without “good cause” and **the inability to obtain either authorizations or medical records prior to plaintiff(s) deposition shall NOT be deemed “good cause”** for adjournment of the deposition(s) of plaintiff(s). If the records subsequently obtained reveal the need for additional information, a further limited deposition(s) of plaintiff(s) may be held by agreement of the parties or by Order of the Court.

All individually named defendants shall be deposed prior to the Compliance Conference or their answer may be stricken (CPLR §3126). On the date of the scheduled deposition, the witness and the court reporter shall appear remotely or at the designated location, at the designated time unless all parties agreed to an EARLIER deposition date. If plaintiff fails to appear at a defendant’s deposition prior to the Compliance Conference, plaintiff will be deemed to have waived the right to depose defendant(s). The depositions of all individually named defendants shall be held in order of caption unless a defendant is unable to proceed on his or her date. Then the next individually named defendant’s deposition shall proceed. It is the Court’s intent that each individually named defendant’s deposition shall be scheduled up to fifteen (15) days apart, regardless of caption order. If a defendant’s attorney is unable or unavailable to appear and participate in a deposition of a co-defendant, that deposition shall proceed as scheduled.

(b) Plaintiff shall identify names for institutional defendants for deposition designation purposes which are revealed through the depositions of individual defendants, within one week of completion of all individual defendants’ depositions. Institutional witnesses shall be produced within 30 days of identification if still employed. On the date of the scheduled deposition, the witness and the court reporter shall appear remotely or at the designated location, at the designated time unless all parties agreed to an EARLIER deposition date. If no longer employed, then the last known address and date of birth shall be provided within 15 days. If a defendant’s attorney is unable or unavailable to appear and participate in a deposition of a co-defendant, that deposition shall proceed as scheduled.

Defendant(s) depositions shall proceed as follows:

Defendant _____ on or before _____
Defendant _____ on or before _____
Defendant _____ on or before _____

(c) Unless otherwise directed prior to the examinations before trial, attorneys seeking rulings on objections or making application for any other relief pertaining to the depositions shall promptly call Chambers, with their reporter present, or shall communicate with the Emergency Justice, for a determination.

(d) Once begun, that particular party deposition shall continue day to day until completed. The attorneys shall follow 22 NYCRR§221 (Uniform Rules For The Conduct of Depositions).

(e) The transcript of an examination before trial shall be delivered to the party deposed within thirty (30) days of the deposition, and shall be returned, duly executed, pursuant to CPLR § 3116.

(f) Subpoenas for the examination before trial of any non-party witness shall be served no later than 45 days after the completion of party depositions, provided such witness is known by completion of party depositions, and if not known at that time, within 45 days of first disclosure or identification of such witness or within the discretion of the Court.

(6) Certificate of Merit and Notice of Podiatric, Dental & Medical Malpractice Action

Plaintiff shall comply with CPLR §3012-a and furnish a Certificate of Merit within 30 days of the date of the Preliminary Conference Order, if not already provided; and shall comply with CPLR§ 3406 within thirty (30) days of the Preliminary Conference Order, if not already provided.

(7) Other Disclosure:

(a) All parties shall exchange information relating to expert witnesses in compliance with CPLR §3101(d)(I) and in compliance with section 10 herein.

(b) All applicable Hospital rules and regulations shall be provided within thirty (30) days of the Preliminary Conference Order.

(c) Liens: If plaintiff is a medicare recipient or eligible for Medicare, Medicaid, Social Services, Worker’s Compensation or any Erisa based plans claiming reimbursement of monies utilized for special damages, plaintiff shall, within thirty (30) days of the date of the Preliminary Conference Order, provide defendant(s) with the details of said lien(s), or if unknown, copies of correspondence to Medicare, evidencing plaintiff’s efforts to determine the outstanding claim(s) against said plaintiff/beneficiary, should one exist.

(d) Additional Disclosure Issues: With respect to additional disclosure issues, the parties shall comply with the following agreement:

(8) **Impleader**: All third-party actions shall be commenced within 60 days of the date of the Compliance Conference Order. Joinder of a third-party action beyond this date without leave of Court may result in a severance.

(9) **Compliance Conference**:

(a) All parties shall jointly submit a Compliance Conference Stipulation on consent of all parties via email to QSCMDP@nycourts.gov on _____. Failure to timely submit the Compliance Conference Stipulation and Order may result in dismissal of the action or striking of the Answer and shall result in a default Compliance Conference Order.

As all cases involving the Health and Hospital Corporation are handled by Justice Kevin J. Kerrigan, the Compliance Conference Stipulation and Orders shall be submitted via email to QSCPart10@nycourts.gov on _____, pursuant to the Part 10 rules.

All parties shall bring a copy of the Preliminary Conference Order to the Compliance Conference.

(b) Filing of a Note of Issue prior to the Compliance Conference must include a written stipulation fully executed by all parties acknowledging that all discovery has been completed. Failure to comply with this provision may result in vacatur of the prematurely filed Note of Issue.

(c) Copies of medical reports and pleadings are to be brought to the Compliance Conference and attending attorneys must be knowledgeable about the case and be prepared to discuss settlement at that time.

(10) **Note of Issue**: Plaintiff shall file a Note of Issue/Certificate of Readiness on or before _____. Within four (4) weeks of the filing of the Note of Issue, plaintiff's counsel shall file and serve upon defense counsel, a CPLR § 3101(d) expert exchange and settlement demand. Defendant's counsel shall serve upon plaintiff's counsel a CPLR §3101(d) expert exchange within four (4) weeks of being served with plaintiff's CPLR 3101(d) exchange. If necessary, any party may supplement their §3101(d) expert information up to 30 days prior to trial and all sides shall disclose in writing, no later than sixty (60) days prior to trial, a list of witnesses anticipated to be called at the time of trial.

If the Note of Issue is not timely filed, the case may be dismissed pursuant to CPLR §§3126 and/or 3216. If any party fails to timely serve its CPLR §3101(d) exchange, the case may be dismissed on the grounds of "failure to prosecute".

(11) **Motions for Summary Judgment**: Pursuant to CPLR Rule 3212(a), any motion for summary judgment shall be served and filed no later than **120 days after the filing of the Note of Issue**. The return date for any motion for summary judgment shall be noticed for the next motion day immediately following the serving and filing of the motion for summary judgment. The Court will consider imposing sanctions on attorneys and law firms that make frivolous motions.

(12) Stipulations of settlement or discontinuance are to be filed by defendant, pursuant to 22 NYCRR §202.28, with the Part of court to which the action has been assigned, within 20 days of such discontinuance.

ALL RULES AND REGULATIONS CONTAINED HEREIN SHALL BE STRICTLY ADHERED TO.

SO ORDERED:

Dated:

J.S.C.

I, the undersigned, have read the preceding and fully understand the provisions contained herein shall constitute an order of the court. Failure to comply with any provision of this Order may result in the imposition of costs, sanctions or other penalties provided by law.

The contents and provisions of the foregoing Order are agreed to, and receipt of a copy of the order is acknowledged:

Attorney for Plaintiff

Attorney for Defendant

Attorney for Plaintiff

Attorney for Defendant

Attorney for Plaintiff

Attorney for Defendant

Attorney for Plaintiff

Attorney for Defendant