

INSTRUCTIONS: PLEASE TYPE OR PRINT NEATLY MAKING SURE ALL WRITING IS CLEAR AND LEGIBLE ON EACH COPY

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X IAS PART _____

HON. _____

Plaintiff(s)

-against-

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

**Preliminary Conference
Stipulation and Order
For Medical, Dental and
Podiatric Malpractice
Actions**

INDEX NO: _____

RJI DATE: _____

Defendant(s)

-----X

BRIEF CASE DESCRIPTION:

APPEARANCES:

Plaintiff:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 1:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 2:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 3:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

If there are Defendants # 4 or # 5 or others in this case, please insert pages for additional parties.

THIS ACTION having come on for a Preliminary Conference pursuant to Section 202.56 of the Uniform Rules of the New York State Trial Courts in order to establish a schedule for the completion of disclosure and other related matters. The parties stipulate and it is hereby:

ORDERED that the action is entitled to a preference pursuant to CPLR 3403(a)(5), and it is further

ORDERED that there is to be timely compliance with each of the items below within the time set forth unless the time is extended by a **“so-ordered” OR court-approved written stipulation.**

I. INSURANCE INFORMATION

Insurance coverage information shall be provided in writing with respect to each defendant for all applicable periods within 30 (thirty) days as follows [check applicable spaces:]

- ____ Primary coverage, including insurance carrier, policy number(s) and policy coverage periods;
- ____ Excess coverage, including insurance carrier, policy number(s) and policy coverage periods; and
- ____ Declaration sheets.

II. BILL OF PARTICULARS

(a) A further Verified Bill of Particulars shall be served upon each defendant within 20 (twenty) days as to the following items:

(b) Defendant(s) shall serve upon plaintiff a Verified Bill of Particulars as to the affirmative defenses and/or counterclaims in the Answer (when demanded) within 20 (twenty) days.

III. MEDICAL RECORDS AND AUTHORIZATIONS

(a) HIPAA-compliant medical authorizations, *if not already provided with the Bill of Particulars*, shall be furnished to defendant(s) within 20 (twenty) days as to the following health care providers:

(b) Following plaintiff's deposition, plaintiff shall provide HIPAA-compliant authorizations for appropriate records within 10 (ten) days of receipt of a written request from the defendant(s).

(c) Medical records shall be furnished by the defendant(s) within 30 (thirty) days as follows [check where applicable, and identify specifically]:

- 1. ____ Office records, including reports and correspondence. _____
- 2. ____ Hospital chart. _____
- 3. ____ Billing records. _____
- 4. ____ Autopsy report. _____
- 5. ____ Radiology film/report. _____
- 6. ____ Curriculum vitae of defendant(s). _____
- 7. ____ Hospital rules and regulations. _____
- 8. ____ Other. _____

(d) If a medical record to be supplied by a defendant is not available, within 30 (thirty) days, an affidavit shall be supplied by defendant, or by a records custodian with personal knowledge, which shall set forth a statement concerning the customary record-keeping practices of the physician/hospital, and the date, nature and location of the search conducted, including all efforts undertaken to locate such records.

(e) If the records described in paragraph (d) above are subsequently located, they shall be promptly supplied to all parties. Any party who fails to produce such items more than 30 (thirty) days after they are located but, in any event, no later than 30 (thirty) days prior to trial shall be precluded from introducing the items into evidence, unless good cause is demonstrated.

IV. DEPOSITIONS

- ★ **All dates listed below are dates certain and may *NOT* be adjourned unless the time is extended by a "so-ordered" OR court-approved written stipulation.**
- ◆ **Inability to obtain medical records prior to the deposition dates shall *NOT* be cause for adjournment of the deposition. If the records subsequently obtained reveal the need for additional information, a further limited deposition may be held by agreement of the parties or by Order of the Court.**

(a) Dates:

Plaintiff(s) on or before: _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

▶ THE DEPOSITION OF EACH DEFENDANT SHALL BE CONDUCTED ON THE DATE SET FORTH ABOVE EVEN THOUGH AN EARLIER SCHEDULED DEPOSITION OF ANOTHER DEFENDANT WAS NOT CONDUCTED.

(b) Deposition of Institutional Defendant(s):

Within 30 (thirty) days after plaintiff's deposition, plaintiff shall serve upon counsel for any institutional defendant(s) a demand for the identification of no more than 5 (five) health care providers who are referred to, or made entries, in the medical records. Within 20 (twenty) days of service of the demand, the institutional defendant(s) shall provide the full name and employment status of each of these individuals, and, if not under the institution(s)' control, the last known address of each individual. Within 5 (five) business days thereafter, plaintiff shall designate the first witness under the institution(s)' control to be deposed and the institutional defendant(s) shall produce said witness. Plaintiff shall then designate additional witnesses under defendant(s)' control for deposition within 5 (five) business days after said EBT. If the institutional defendant(s) do not voluntarily produce the additional requested witnesses within 20 (twenty) days of plaintiff's designation, plaintiff may seek an order compelling additional depositions pursuant to statute.

All of these individuals shall be deposed on or before _____.

(c) Non-Party Witness Depositions:

Plaintiff is to advise defendant(s) within 30 (thirty) days of this Preliminary Conference Order whether the following non-party witnesses will be produced for deposition voluntarily, or whether a subpoena will be necessary. If the latter, plaintiff is to provide the witnesses' last known addresses within 30 (thirty) days of this Stipulation and Order.

Name of Non-Party Witness: _____

Name of Non-Party Witness: _____

(d) Time and Place:

Plaintiff(s)' deposition(s) shall be held at _____, commencing at _____ (a.m.) (p.m).

Defendant(s)' deposition(s) shall be held as follows [List the time and place for each deposition]:

(e) Objections:

- ALL questions asked at any deposition must be answered UNLESS they (a) infringe upon a privilege, (b) bear SOLELY on the negligence of a co-defendant and NOT in any way on the potential negligence of the deponent, or (c) are palpably irrelevant.
- If a party makes an objection as to *form*, the objector shall immediately and succinctly indicate the nature of the defect so as to permit correction. In any event, the witness shall answer the question.
- Depositions shall not be interrupted for an attorney-deponent conference.

- Counsel for the deponent shall NOT engage in coaching during the deposition and shall NOT suggest answers to questions (e.g. "If you know . . ."; "If you remember . . .").

V. PHYSICAL EXAMINATIONS

Defendant(s) who wishes to conduct a physical or mental examination pursuant to CPLR 3121 shall designate in writing an examining physician or other specialist within 30 (thirty) days of plaintiff's deposition. The examination of the plaintiff must be conducted at least 30 (thirty) days before the filing of the Note of Issue.

Specialty: _____

Defendant(s) shall serve upon all parties written reports of any examining physician within 60 (sixty) days after the examination, and at least 30 (thirty) days before trial. Pursuant to CPLR 3121, plaintiff shall provide defendant(s) with a written report by any non-treating examining physician within 60 (sixty) days after an examination, and at least 60 (sixty) days before trial.

VI. OTHER DISCLOSURE *

(a) Witnesses: Parties shall exchange names and addresses of all FACT WITNESSES concerning liability and/or damages (other than expert witnesses) no later than 60 (sixty) days before trial. Parties shall also exchange adverse party statements within that same period.

(b) Photographs and Videotapes: Parties shall exchange all photographs and/or videotapes within 60 (sixty) days after their creation and/or availability but not less than 30 (thirty) days before trial absent a showing of good cause.

(c) Employment: If loss of earnings is claimed, authorizations for plaintiff's employment records (including W-2's, 1099's and/or income tax returns) for a period of ___ years before the claimed malpractice and continuing to date, shall be provided within 30 (thirty) days.

(d) Collateral Sources: Plaintiff shall provide authorizations for the following collateral source providers within 30 (thirty) days:

(e) Discovery Notices: Responses to the following outstanding Discovery and Inspection Notices shall be furnished within 30 (thirty) days:

* This disclosure demand shall be considered ongoing and continuous. If requested items subsequently become available, they are to be supplied immediately upon receipt of the same to all parties to the action.

VII. EXPERT EXCHANGE

Plaintiff shall serve a CPLR 3101(d) expert disclosure no later than 60 (sixty) days before trial.

Defendant(s) shall serve a CPLR 3101(d) expert disclosure no later than 45 (forty-five) days before trial.

VIII. DEATH ACTIONS

In wrongful death actions, plaintiff shall provide the following when available within 30 (thirty) days. If not currently available, then within 30 (thirty) days after receipt of the document: death certificate, letters of administration or letters testamentary, marriage certificate, and authorization for the autopsy reports.

IX. ADDITIONAL DIRECTIVES

X. NOTE OF ISSUE: The Note of Issue and Certificate of Readiness shall be filed on or before _____.

XI. SUMMARY JUDGEMENT AND/OR OTHER DISPOSITIVE MOTIONS

Motions for Summary Judgement and/or other dispositive motions shall be made no later than **60 (sixty) days** from the filing of the Note of Issue, unless the Court directs otherwise.

XII. FURTHER DIRECTIVES: It is

ORDERED that failure to comply with the terms of this STIPULATION AND ORDER may result in sanctions as authorized by CPLR 3126, and it is further

ORDERED that a compliance conference shall be held on _____ at _____ (AM) (PM), and it is further

ORDERED that **ALL prior discovery** orders of this court be brought to any and all subsequent conferences.

Dated: _____

SO STIPULATED:

Plaintiff: _____

Printed Name: _____

Firm Name: _____

Defendant # 2 _____

Printed Name: _____

Firm Name: _____

Defendant # 4 _____

Printed Name: _____

Firm Name: _____

Defendant # 1 _____

Printed Name: _____

Firm Name: _____

Defendant # 3 _____

Printed Name: _____

Firm Name: _____

Defendant # 5 _____

Printed Name: _____

Firm Name: _____

SO ORDERED:

JUSTICE OF THE SUPREME COURT