

**Stone v Dubey**

2026 NY Slip Op 31139(U)

March 23, 2026

Supreme Court, New York County

Docket Number: Index No. 805030/2024

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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ANDREW STONE,

Plaintiff,

- v -

NEIL DUBEY, M.D., DAWN S. HALEY, P.A./C., and NEW  
YORK-PRESBYTERIAN COLUMBIA UNIVERSITY  
MEDICAL CENTER,

Defendants.

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INDEX NO. 805030/2024

MOTION DATE 01/08/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY  
DEMAND/FROM TRIAL CALENDAR.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and negligent hiring, training, supervision, and retention of healthcare personnel, the defendants move pursuant to 22 NYCRR 202.21(e) and 22 NYCRR 208.17(c) to vacate the note of issue and certificate of readiness. The plaintiff opposes the motion. The motion is granted only to the extent that, while the action remains on the trial calendar, the defendants shall, on or before April 17, 2026, inform the plaintiff as to the identities of the healthcare providers with respect to which they seek additional authorizations, and the plaintiff shall, on or before May 17, 2026, prepare and provide the defendants with HIPAA-compliant authorizations permitting them to obtain his medical and other records from the healthcare providers so identified, along with any documentary proof in the plaintiff's possession referable the plaintiff's loss of earnings claim, proof of any lien claimed by Medicaid, to the extent that the New York City Department of Social Services/Human Resources Administration makes that information available by that date, and a supplemental bill

of particulars as to the special damages claimed. The defendants' deadline for the defendants to move for summary judgment is extended until July 17, 2026. The motion is otherwise denied.

A court may vacate a note of issue where it appears that a material fact set forth therein, i.e., the representation that discovery is complete, is incorrect (see 22 NYCRR 202.21[e]; *Riverside Ctr. Site 5 Owner, LLC v Lexington Ins. Co.*, 225 AD3d 574, 575 [1st Dept 2024]; *Gomes v Valentine Realty LLC*, 32 AD3d 699, 700 [1st Dept 2006]; *Herbert v Sivaco Wire Corp.*, 1 AD3d 144, 147 [1st Dept 2003]). Generally, "a note of issue should be vacated when it is based upon a certificate of readiness that contains erroneous facts" (*Cromer v Yellen*, 268 AD2d 381, 381 [1st Dept 2000]). Nonetheless, where, as here, discovery is nearly completed, "[a] court, in its discretion, may allow post-note of issue discovery without vacating the note of issue as long as prejudice to either party would not result" (*WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc.*, 193 AD3d 523, 523 [1st Dept 2021]; see *Samuelsen v Wollman Rink Operations, LLC*, 196 AD3d 408, 408-409 [1st Dept 2021] [permitting defendant to conduct IME while action remained on the trial calendar]). Such an exercise of discretion is particularly apt in the instant action, where this court, as a dedicated medical malpractice part, controls its own trial calendar and the scheduling of jury selection in actions that have been assigned to it.

CPLR 3101(a) calls for "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 407 [1968] [internal quotation marks omitted]). Evidence is material if sought "in good faith for possible use as evidence-in-chief or rebuttal or for cross-examination" (*id.*). "[A]lthough a plaintiff who commences a personal injury action has waived the physician-patient privilege to the extent that his [or her] physical or mental condition is affirmatively placed in controversy . . . , the waiver of that privilege does not permit discovery of information involving unrelated illnesses and treatments" (*Bozek v Derkatz*, 55 AD3d 1311, 1312 [4th Dept 2008] [internal quotation marks omitted]; see *Barnes v Habuda*, 118 AD3d 1443, 1444 [4th Dept

2014]; *Felix v Lawrence Hosp. Ctr.*, 100 AD3d 470, 471 [1st Dept 2012]; *Elmore v 2720 Concourse Assoc., L.P.*, 50 AD3d 493 [1st Dept 2008]). The defendants have the burden of establishing that the records with respect to which they seek authorizations are relevant to the plaintiff's claimed injuries (see *Budano v Gurdon*, 97 AD3d 497, 498 [1st Dept 2012]). The plaintiff already has provided the defendants with authorizations permitting them to obtain his work records from Universal Protection Service, LLC, and his medical records from NY Presbyterian /Columbia University Medical Center, City MD Ditmars Urgent Care, Richard Steiner, M.D./Riverdale Podiatry & Foot Surgery, and Nicholas Morrissey, M.D. Inasmuch as the defendants have not identified, in their motion papers, the additional healthcare providers whose records they seek, the plaintiff must be afforded an opportunity to review the identities of those providers before furnishing the defendants with authorization referable thereto.

Accordingly, it is,

ORDERED that the defendants' motion is granted only to the extent that, while the action remains on the trial calendar, the defendants shall, on or before April 17, 2026, inform the plaintiff as to the identities of the healthcare providers with respect to whom they seek additional authorizations, and the plaintiff shall, on or before May 17, 2026, prepare and provide the defendants with HIPAA-compliant authorizations permitting them to obtain his medical and other records from the healthcare providers so identified, subject to any objection as to relevance, along with any documentary proof in the plaintiff's possession referable the plaintiff's loss of earnings claim, proof of any lien claimed by Medicaid, to the extent that the New York City Department of Social Services/Human Resources Administration makes that information available by that date, and a supplemental bill of particulars as to the special damages claimed, the defendants' deadline for the defendants to move for summary judgment is extended until July 17, 2026, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

3/23/2026  
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE