

Vink v Ranawat

2005 NY Slip Op 30428(U)

April 6, 2005

Supreme Court, Columbia County

Docket Number: 122226/02

Judge: Eileen Bransten

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

PRESENT: Eileen Bransten
Justice

PART 6

VIVIK, ADRIANA

INDEX NO. 122226/0.

MOTION DATE 3/8/05

MOTION SEQ. NO. 04

MOTION CAL. NO. 09

- v -

RANZWAT, MD,
CHITRAPATAN

The following papers, numbered 1 to 3 were read on this motion to/for compel

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

1

Answering Affidavits -- Exhibits

2

Replying Affidavits

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in
accordance with the accompanying
memorandum

FILED

APR 12 2005

NEW YORK
CLERK OF SUPREME COURT

Dated: 4-6-05

Eileen Bransten
EILEEN BRANSTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART SIX

-----X
ADRIANA VINK,

Plaintiff,

-against-

Index No.:122226/02
Motion Date: 03/8/05
Motion Seq. Nos.: 04, 05

CHITRANJAN RANAWAT, M.D., LENOX HILL
HOSPITAL, RANAWAT ORTHOPEDIC CENTER,
LLC, R. REINA, M.D., ERIC SPENCER, M.D.,
BURKE REHABILITATION CENTER and
STEPHEN KARDON, M.D.,

Defendants.

-----X
PRESENT: EILEEN BRANSTEN, J.

Motion sequence numbers 04 and 05 are hereby consolidated for disposition.

In motion sequence number 04, plaintiff Adriana Vink ("Ms. Vink") moves to compel defendant Lenox Hill Hospital ("Lenox Hill") to produce: a redacted copy of the Operating Room Log of defendant Chitranjan Ranawat, M.D. ("Dr. Ranawat") for September 5, 2001; Dr. Ranawat's redacted Operating Room Records and Reports for September 5, 2001; and copies of any policies or protocols regarding Medicare requirements for teaching physicians promulgated by Lenox Hill that were in effect on September 5, 2001. Lenox Hill, Dr. Ranawat and Ranawat Orthopedic Center, LLC ("Ranawat Orthopedic") oppose this motion.

In motion sequence number 05, Ms. Vink moves to compel Dr. Ranawat to properly respond to interrogatories number two and three, which the Court ordered on August 26, 2004. Dr. Ranawat opposes this motion.

Background

In this medical malpractice action, Ms. Vink alleges that defendants Dr. Ranawat, Lenox Hill, Ranawat Orthopedic, R. Reina, M.D. ("Dr. Reina"), Eric Spencer, M.D. ("Dr. Spencer"), Burke Rehabilitation Center ("Burke") and Stephen Kardon, M.D. ("Dr. Kardon") negligently performed total hip replacement surgery on her.* Affirmation in Opposition to Motion Sequence 04 ("Opp. 04"), at ¶ 3.

On June 23, 2004, plaintiff filed the Note of Issue, but reserved the right to obtain disclosure of various outstanding items, including Dr. Ranawat's Operating Room Log; "items contained in plaintiff's letter dated June 4, 2004" relating to Defendants' implant catalogue; gamma irradiation information; and the "Dear Doctor" letter. Plaintiff's Affirmation in Support of Motion Sequence Number 04 ("Aff. 04"), at ¶ 4.

On August 26, 2004, moreover, the Court ordered Dr. Ranawat to respond to interrogatories number two and three, which they had earlier requested. Affirmation in Support of Motion Sequence Number 05 ("Aff. 05"), at ¶ 5. Dr. Ranawat answered the interrogatories on September 7, 2004. Aff. 05, at ¶ 6.

On October 18, 2004, Ms. Vink sent a letter to Dr. Ranawat stating that his responses to the interrogatories were unsatisfactory. Aff. 05, at ¶ 7. Also on that date, Ms. Vink requested copies of Dr. Ranawat's Operating Room Log, Records and Reports for September

* Plaintiff discontinued as to Burke and Dr. Spencer, and never served Dr. Reina. Therefore, they are no longer parties to this action.



5, 2001 to determine whether Dr. Ranawat was present during her surgery. Aff. 04, at ¶ 5.

Plaintiff now moves to compel Lenox Hill to produce Dr. Ranawat's Operating Room Records, Reports and Logs for September 5, 2001 and any Medicare protocols for teaching physicians in effect on September 5, 2001. Aff. 04, at ¶ 20. Ms. Vink also moves to compel Dr. Ranawat to properly answer interrogatory questions number two and three. Aff. 05, at ¶ 3.

Lenox Hill and Dr. Ranawat oppose this motion, arguing that they already provided plaintiff with the Operating Room Log and Record on August 13, 2004 and October 6, 2004, respectively. Opp. 04, at ¶ 4. Additionally, they argue that plaintiff's request for Medicare protocols is unreasonable because disclosure is over and the Note of Issue has already been filed. Opp. 04, at ¶ 7. Finally, Dr. Ranawat argues that he has already provided complete answers to plaintiff's interrogatories. Dr. Ranawat's Affirmation in Opposition, ("Opp. 05"), at ¶ 1.

Analysis

CPLR 3101 mandates that there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has explained that the words "material and necessary" are to be liberally construed "to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial

by sharpening the issues and reducing delay and prolixity.” *Allen v. Crowell-Collier Pub. Co.*, 21 N.Y.2d 403, 406–07 (1968). Thus, the “CPLR requires the disclosure of all evidence relevant to the case and *all information reasonably calculated to lead to relevant evidence.*” *See*, Siegel, *New York Prac.* § 344, at 525 (3d ed.) (emphasis added).

Nonetheless, the Court has discretion to limit discovery and issue a protective order to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice.” CPLR 3103; *Pomeranz v. Pomeranz*, 99 A.D.2d 407 (1st Dep’t 1984); *Byck v. Byck*, 294 A.D.2d 456, 457 (2d Dep’t 2002).

Operating Room Records and Logs

Here, Ms. Vink’s disclosure requests are reasonable and relevant. Ms. Vink is looking for important documents relating to the question of whether Dr. Ranawat was present during her surgery. Specifically, Dr. Ranawat’s Operating Room Records, Reports and Log will show whether Dr. Ranawat was engaged in surgery elsewhere during the time he claims to have been present for Ms. Vink’s surgery. Because this information may be material and necessary to Ms. Vink’s case, Lenox Hill must produce the Operating Room Records, Reports and Log of Dr. Ranawat for September 5, 2001 with the names of the patients and any patient-identifying information redacted within 30 days of this Decision and Order.

If Lenox Hill claims that it cannot find these documents, Ms. Vink is entitled to an affidavit from a person with knowledge, explaining the past and present whereabouts of the documents. *Orner v. Mount Sinai Hospital*, 305 A.D.2d 307, 310 (1st Dep't 2003); *Longo v. Armor Elevator Co.*, 278 A.D.2d 127, 129 (1st Dep't 2000). These affidavits are to be submitted to Ms. Vink within 30 days of this Decision and Order.

Medicare Protocols

Similarly, Ms. Vink's request for a copy of the Medicare protocols for teaching physicians in place on September 5, 2001 is reasonable. The protocols are relevant to whether Dr. Ranawat had a duty to be present during Ms. Vink's surgery and whether she departed from that duty. As such, Lenox Hill must also produce the Medicare protocols in place for teaching physicians at the time of the surgery within 30 days of this Decision and Order. If it cannot find these documents, Ms. Vink is entitled to an affidavit from a person with knowledge, explaining the past and present whereabouts of the documents. *Orner v. Mount Sinai Hospital*, 305 A.D.2d 307, 310 (1st Dep't 2003); *Longo v. Armor Elevator Co.*, 278 A.D.2d 127, 129 (1st Dep't 2000). These affidavits are to be submitted to Ms. Vink within 30 days of this Decision and Order.

Interrogatories

In answering an interrogatory, CPLR 3133(b) provides that "each question shall be answered separately and fully ***." Here, Ms. Vink inquired in question two (misnamed question number one by Dr. Ranawat), "Within a reasonable degree of medical certainty, if the length of the left leg was increased during surgery by 3/4 of an inch, could that cause a stretching of the sciatic nerve? If yes, explain the basis for the stretching." Opp. 05, at ¶ 3.

Dr. Ranawat responded,

"If the patient's left leg was lengthened by 3/4" during the total hip replacement surgery, this could cause a stretching of the sciatic nerve. As I stated at my deposition, a lengthening of a leg beyond 2-4cm. during total hip replacement surgery has been described in the literature as a cause for sciatic nerve palsy. In this case, by radiographic measurements, the left leg was shortened at the hip therefore, the sciatic nerve was not stretched."

Id.

Ms. Vink alleges that this answer is insufficient because Dr. Ranawat does not explain on which studies or pieces of literature he relies. Dr. Ranawat, by contrast, argues that he does not have to provide specific citations because Ms. Vink had an opportunity to question him regarding the basis of his opinion at deposition.

The reason the Court ordered Dr. Ranawat to answer this interrogatory on August 26, 2004, however, is because he failed to properly answer the question at his deposition. Therefore, he cannot now claim that Ms. Vink had an opportunity to depose him as to this

question. Dr. Ranawat is ordered to reply to interrogatory number two with a complete and detailed answer within 30 days of this Decision and Order. His answer is to contain not only his opinion that lengthening of a leg can cause sciatic palsy, but a review of the specific literature on which he relied in forming that opinion.

With respect to interrogatory question number three (misnamed question number two by Dr. Ranawat), Ms. Vink inquires, "Assuming the plaintiff's left leg was 3/4 of an inch longer than her right leg after the surgery, within a reasonable degree of medical certainty, what would be the cause of that lengthening? What is the basis for this cause?" Opp. 05, at

¶ 3. Dr. Ranawat answered:

"Assuming, hypothetically, that the patient's left leg was 3/4" longer than the patient's right leg after total hip replacement surgery, such could have been the patient's condition pre-operatively or, again, hypothetically, could be the result of the surgery." Also, we may not know the mechanism of such a hypothetical finding. In this case, again radiographically, the left leg was noted to be shortened postoperatively and, therefore, the hypothetical finding of left leg lengthening has no relevance to this patient."

Ms. Vink objects to this answer and argues that it is insufficient because it is stated in hypothetical terms. Aff. 05, at ¶ 14. The question, however, is hypothetical; it begins with the word "assuming." Therefore, Dr. Ranawat's response, which answers plaintiff's hypothetical question in the same terms, is sufficiently particular and does not need to be supplemented.

Accordingly, it is

ORDERED that Ms. Vink's motion to compel Lenox Hill to produce Dr. Ranawat's Operating Room Records, Reports and Log is granted. Within 30 days of this Decision and Order, Lenox Hill is to produce these documents or submit an affidavit by a person with knowledge explaining the search that was performed and stating that it cannot find the documents; and it is further

ORDERED that Ms. Vink's motion to compel Lenox Hill to produce a copy of the Medicare protocols in place for teaching physicians at the time of the surgery is granted. Within 30 days of this Decision and Order, Lenox Hill is to produce these documents or submit an affidavit from a person with knowledge stating that it cannot find the documents; and it is further

ORDERED that Ms. Vink's motion to compel Dr. Ranawat to properly respond to interrogatory question number two is granted. Within 30 days of this Decision and Order, Dr. Ranawat is serve his response; and it is further

ORDERED that Ms. Vink's motion to compel Dr. Ranawat to properly respond to interrogatory question number three is denied; and it is further

ORDERED that all parties are to appear for trial on May 2, 2005 at 9:30am.


This constitutes the Decision and Order of the Court.

Dated: New York, NY

~~March~~ __, 2005

April 6, 2005

ENTER


Hon. Eileen Bransten

FILED

APR 12 2005

NEW YORK
COUNTY CLERK'S OFFICE