

Mora v Saint Vincent's Catholic Med. Ctrs. of N.Y.
2005 NY Slip Op 30497(U)
March 4, 2005
Supreme Court, New York County
Docket Number: 113944/03
Judge: Stanley L. Sklar
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Stanley J. Sklar
Justice

PART 29

0113944/2003

MORA, WANDA
vs
ST. VINCENT'S CATHOLIC
MEDICAL

SEQ 2

— COMPEL

DEX NO. _____

OTION DATE _____

OTION SEQ. NO. _____

OTION CAL. NO. _____

The following papers, numbered 1 to 14 were read on this motion to/for _____

Amended

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

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits 2 Exhibits 2

Answering Affidavits 1 Exhibits 8

Replying Affidavits _____

PAPERS NUMBERED

1-5

6-14

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion *and motion 003 are*
hereby consolidated for disposition and are

FILED

MAR 16 2005

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/4/05

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 29

-----X

WANDA MORA,

Plaintiff,

Index No.: 113944/03

-against-

SAINT VINCENT'S CATHOLIC MEDICAL
CENTERS OF NEW YORK, YUN HSI HSU, M.D.,

Defendants.

-----X

Sklar, J.:

Motions 002 and 003 are hereby consolidated for disposition.

Defendant Dr. Yun Hsi Hsu moves (003) for an order compelling plaintiff to provide outstanding discovery in the form of authorizations¹ and precluding plaintiff for her failure to provide such discovery. Dr. Hsu also seeks an order adjourning plaintiff's deposition until appropriate discovery is exchanged. It is claimed that only a limited number of authorizations have been provided and that those provided were improperly limited in time and scope.

Defendant St. Vincent's Catholic Medical Centers of New York- St. Vincent's Staten Island, s/h/a/ Saint Vincent's Catholic Medical Centers of New York ("the hospital") moves (002) for an order compelling plaintiff to provide outstanding authorizations and adopts the arguments made on behalf of Dr. Hsu, noting without further elaboration that plaintiff has

¹ Both motions refer to discovery demands, some of which requested more than authorizations, but the only discovery items specifically addressed on these motions were authorizations. I shall therefore limit this application to a request for authorizations. If something more is sought defendants can again request the items from plaintiff's counsel, raise it at the next conference or if they are so advised seek relief by any appropriate motion.

provided only a handful of authorizations which authorizations were in any event improperly limited as to time periods and the nature of treatment.

On March 25, 2002 plaintiff, Wanda Mora, sought treatment at the hospital's Bailey Seton campus for pain and swelling in the area of her right salivary gland. The hospital assigned her to Dr. Hsu who allegedly diagnosed Mora as having a right submandibular cyst. Dr. Hsu operated on Mora on March 27, 2002 and in his operative report claimed to have removed Mora's right submandibular gland. However according to plaintiff's counsel such gland had been removed on November 16, 2000 by a Dr. David Godin of the hospital's Manhattan campus. It is claimed that Dr. Hsu negligently resected Mora's lingual nerve during the surgery he performed. As a result Mora alleged in her bill of particulars that she experienced swelling, tenderness, tongue numbness, "conscious pain and suffering", "loss of enjoyment of life" and an inability to speak, eat or drink properly. Mora's bill of particulars further alleges that defendants failed "to elicit specifics of the plaintiff's history" and failed "to obtain a past surgical history, and review past medical records of the plaintiff prior to the surgery". It is also claimed that defendants failed "to obtain and review CT scans". According to Mora's counsel Mora was diagnosed by Dr. Mark Persky of Beth Israel Medical Center with right lingual nerve dysfunction, and on October 14, 2002 Mora underwent right neck exploration and an attempted lingual nerve identification and possible reconstructive nerve graft, which could not be performed because the nerve was absent.

According to Dr. Hsu's counsel, she is aware from Bailey Seton Hospital records of a January 11, 1998 emergency room visit that Mora had complaints of difficulty in swallowing. Dr. Hsu's counsel, based on that visit as well as several subsequent hospital visits

where Mora presented with complaints of pain and difficulty in swallowing, asserts that since these complaints went back “for at least four years before the surgery at issue here” (Ruddy aff. in support ¶ 24) Dr. Hsu is entitled to authorizations for health care providers and collateral sources commencing in 1997 through the present (See, Ruddy letter dated 6/18/04).

It appears that the authorizations in issue are those contained in exhibits “A” and “D” to Dr. Hsu’s motion. See, Lenane aff. of good faith which refers to Joan Ruddy’s letters of June 18, 2004 and July 28, 2004, as well as to Mr. Lenane’s request for plaintiff to comply with Ruddy’s letter of June 18, 2004. If other authorizations are being sought defense counsel can again seek them from plaintiff’s counsel, raise the issue at the next conference or make any appropriate motion they are advised to make.

Evidently Mora’s counsel provided a small number of the authorizations requested, some before the instant motions were served and others thereafter². But, defense counsel asserts that some authorizations have not yet been provided and others improperly restricted the time period to a year before the alleged malpractice (See, exhibit “L” to Ruddy moving aff.) and/or limited the information to be disclosed to “head, neck, and/or dental treatment” (See authorizations appended to the opposing affirmations). Dr. Hsu’s counsel further asserts that defendants are entitled to Mora’s psychiatric records since she has alleged claims for conscious pain and suffering and loss of enjoyment of life. Defense counsel evidently seeks such records going back “as early as six years prior to [defendants’] involvement with this patient”. Ruddy reply aff ¶ 16

² It is not entirely clear from the papers provided which authorizations have been provided.

Following a review of Ms. Ruddy's June 18, 2004 and July 28, 2004 letters, the plaintiff is directed to provide, within 20 days of service of a copy of this order with notice of entry, defense counsel with unrestricted authorizations for the following providers from 1997 through the present if she has not already done so: Dr. Julia Basaranlar, Dr. Edward Phillips, Dr. Bushra, Dr. Theophilus Okeke, Dr. Victoriosa Phasighahjen, Dr. Carl Sceusa, Dr. Frederick Sabido, Dr. Joshua Pollack, Dr. David Godin, Dr. Mark Persky, Dr. Helen Brown Yoo, Dr. Jordan Stern, Dr. Cesar Seguritan, Dr. Mythro Montes, Dr. James Robilotti, Dr. Robert Braff, Dr. Donald Acquafredda, Dr. Jacque Rockwood, Dr. Mark Joy, Dr. Alex Askanas, Dr. Michael Margiota, Dr. Paul Bushkuhl and any plastic surgeon who treated plaintiff with respect to her neck, head or mouth. These doctors were primary care physicians, ENT specialists, physicians who plaintiff already provided authorizations for, albeit limited, doctors who treated plaintiff during hospital stays involving complaints relevant to the issues in this case, and/or plastic surgeons who treated the part of plaintiff's anatomy that will likely be relevant here.

To the extent not already provided within that same 20 day period plaintiff is directed to provide defense counsel with unlimited authorizations from 1997 through the present for the collateral source records from Fidelis³, Genesis and Medicaid.

Within that same 20 day period plaintiff is directed to provide defendants with unlimited authorizations from 1997 through the present to enable defendants to obtain plaintiff's pharmacy records from the St. George Drug Store, Maxor National Pharmacological Services,

³ Plaintiff's counsel indicates that the New York State Catholic Health Plan is doing business as Fidelis Care of New York; thus plaintiff need not provide a separate authorization for the former entity.

Hook Super X, Inc., Walgreen Eastern, Inc., Balaji Targee Pharmacy Corp. and Shop Rite Supermarket Pharmacy. Plaintiff is asserting claims of permanent pain, swelling and tenderness. Thus her pharmacy records may well prove relevant here on the issues of medical expenses and pain and suffering. In addition such records may reveal that information about medications being taken by plaintiff are needed to rebut plaintiff's damages claims. Cf Moore v. Superior Ice Rink, Inc., 251 AD2d 305 (2d Dept, 1998)

Within the same 20 day period plaintiff is directed to provide authorizations to defense counsel to enable them to obtain the records of any speech, occupational or physical therapist seen by plaintiff following the surgery performed by Dr. Hsu which therapy was allegedly necessitated by the treatment by defendants.

At this juncture plaintiff need not provide authorizations for Dr. Nicholas Gaultierei, who plaintiff asserts treated her stomach, Dr. Charles Ruvolo, who plaintiff asserts treated her for gastroenterological complaints, Dr. Veerendra Durgam, plaintiff's gynecologist, Dr. Danielle Peterson who defense counsel merely describes as a radiologist who performed a chest x-ray, Dr. Alejandro Zuretti, described merely as a pathologist, Dr. Kumud Gugliada, described merely as a radiologist, Dr. Frederick Smith described merely as an internist and Dr. Anes York, St. Paul Radiology, Transcare King, Central Pathology, Greenwich Medical Center, United Hospital and Alling Health which are not at all described by defendants, since defendants have not established that these healthcare providers have any relevant evidence to offer. If defendants at plaintiff's deposition ascertain that these providers may have relevant evidence they can then seek an authorizations, or if plaintiff does not have a full recollection as to what

these providers did defendants can seek an in camera review of these provider's records to ascertain whether they are relevant.

This leaves the issue of defendants' request for authorizations for any psychological, psychiatric or other mental healthcare provided to the patient. Plaintiff's counsel opposes the request for such authorization asserting that plaintiff's loss of enjoyment of life claim...that as a result of the alleged malpractice plaintiff is deprived of her physical ability to speak properly and eat solid foods, does not place into issue her mental health.

Assuming arguendo that plaintiff is willing to stipulate that her suffering and loss of enjoyment of life claims are limited to physical injuries and not emotional upset as a result of her physical injuries, she does not have to provide authorizations for mental healthcare providers. See L.S. v. Harouche, 260 AD2d 250 (1st Dept, 1999) Accordingly unless within 20 days of service of a copy of this order with notice of entry plaintiff in writing withdraws any claims for emotional or psychological injury, she is directed within 30 days of service of a copy of this order with notice of entry to provide defendants with authorizations for mental healthcare providers from six years before Dr. Hsu treated plaintiff until the present.

The foregoing constitutes the order and decision of the court.

Dated: 3/4/05

FILED

MAR 16 2005

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