

**Chambers v Yambo**

2007 NY Slip Op 30136(U)

March 2, 2007

Supreme Court, Suffolk County

Docket Number: 0014902

Judge: Paul J. Baisley

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SUPREME COURT - STATE OF NEW YORK  
CALENDAR CONTROL PART - SUFFOLK COUNTY

**PRESENT:**

**HON. PAUL J. BAISLEY, JR., J.S.C.**

MOTION DATE: December 4, 2006

ADJ. DATE: December 12, 2006

MOT. NO.: #004 MG

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BRANDON CHAMBERS, an infant under the age of  
fourteen, by CHRISTINA CHAMBERS, his Mother  
and natural guardian,

Plaintiff,

-against-

EDWARD YAMBO, M.D. and STEVEN WILKINS,  
M.D.,

Defendants.

**DEFENDANTS' ATTORNEYS:**  
WAGNER, DOMAN & LETO, P.C.  
By: Colin Rathje, Esq.  
227 Mineola Boulevard  
Mineola, New York 11501

BOWER, SANGER & LAWRENCE, P.C.  
261 Madison Avenue, 12<sup>th</sup> Floor  
New York, New York 10016

-----X  
**PLAINTIFF'S ATTORNEY:**  
FRANK AMBROSINO, ESQ.  
548 West Jericho Turnpike  
Smithtown, New York 11787

Upon the following papers numbered 1 to 14 read on this motion to preclude \_\_\_\_\_; Notice of Motion/  
Order to Show Cause and supporting papers 1-7 \_\_\_\_\_; Notice of Cross Motion and supporting papers \_\_\_\_\_;  
Answering Affidavits and supporting papers 8-12 \_\_\_\_\_; Replying Affidavits and supporting papers 13-14 \_\_\_\_\_  
; Other \_\_\_\_\_; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by the defendant Steven Wilkins to preclude the admission of  
certain documents at trial and from introducing any evidence to show that his license to practice  
medicine was revoked is considered under CPLR 4520 and Public Health Law §10 and is decided as  
follows:

This action sounds in medical malpractice for the unskillful performance of an unnecessary  
operation. On December 1, 2000, the State Department of Health Professional Medical Conduct  
Administrative Review Board issued an order revoking defendant Steven Wilkins' license to practice  
medicine. This order was based on hearings before the Board concerning five patients. The plaintiff  
was not one of the subjects of the investigation and hearing. However, the investigation was  
conducted during the time that the defendant was treating the plaintiff. Defendant seeks to limit the  
admissibility at trial of any documents concerning the investigation and hearing (hereafter known as  
OPMC documents) as well as any reference to the fact that his license was revoked.

CPLR 4520 provides that certificates or affidavits of public officers prepared in the course of their official duties are *prima facie* evidence of the facts contained therein. The documents sought to be admitted here are neither affidavits nor certificates. Accordingly, CPLR 4520 does not apply. Public Health Law §10(2) provides “The written reports of state and local health officers, inspectors, investigators, nurses and other representatives of state and local health officers on questions of fact pertaining to, concerning or arising under and in connection with complaints, alleged violations, investigations, proceedings, actions, authority and orders, related to the enforcement of this chapter, the sanitary code or any local health regulation shall be presumptive evidence of the facts so stated therein, and shall be received as such in all courts and places.” It has been held that the Public Health Law §10 allows for the admission of written reports of OPMC on questions of fact pertaining to complaints or investigations but that the report may not be used as a vehicle to admit into evidence information that would otherwise be inadmissible (*Bogdan v. Peekskill Community Hosp.*, 168 Misc.2d 856, 642 N.Y.S.2d 478; *Maraziti ex rel. Maraziti v. Weber* 185 Misc.2d 624, 713 N.Y.S.2d 821).

The admissibility of OPMC evidence is based upon relevance. In *Bogdan, supra*, the issue was whether or not the plaintiff’s suspension from his employment at the hospital was justified based on the plaintiff’s conduct in departing from good and accepted medical practices. The investigation by OPMC involved cases which were the subject of the hospital’s cause for suspension. The court found that

The findings of fact, including determinations as to departures are clearly supported by the record as reflected in the report, and shall be admitted at trial. The conclusions of law and determination of penalty are clearly not admissible. The report shall be redacted accordingly.

Further, the court permitted the OPMC report of the Chief of Anesthesiology to be admitted because it was probative as to how instances of other departures at the hospital are normally addressed and would aid the jury in its ultimate determination as to whether or not the hospital in causing this suspension acted in good faith and on objectively reasonable grounds.

In *Maraziti, supra*, the claim was for medical malpractice and the court limited the admissibility of the OPMC report to findings which directly involved the event in the case at bar. The investigation which resulted in the revocation of the defendant doctor’s license was based on prior negligent acts. The reported facts suggest that the investigation was on-going at the time that the act of negligence at bar occurred. The court held that the unrelated cases would be marginally relevant and unduly prejudice the jury and therefore precluded the introduction of OPMC findings unrelated to the instant case.

Here, the plaintiff seeks to introduce the report to show the opinions of the board as to defendant’s competency to practice medicine, not because it contains facts which are relevant in determining whether or not his conduct in this incident was negligent. Accordingly, the OPMC report is not admissible at trial. The plaintiff is further precluded from introducing any evidence concerning the revocation of defendant’s license except as to the time during which defendant rendered medical care to the plaintiff.

Date: March 2, 2007

**HON. PAUL J. BAISLEY, JR.**  
J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION