

Matter of Zallie v Brigham

2009 NY Slip Op 31944(U)

August 13, 2009

Supreme Court, New York County

Docket Number: 101795/09

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK
J.S.C.
Justice

PART 2

In re: George J. Zallio, Jr.

INDEX NO. 101795/09

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

application to admit Harold J. Cassidy, Esq. as pro hac vice attorney in this action is granted pursuant to the stipulation, affidavit and certificate of good standing annexed to the application and the motion to quash the protective order is granted in accordance with the accompanying decision

FILED

AUG 19 2009

COUNTY CLERKS OFFICE
NEW YORK

Dated: 8/13/09
~~4/20/09~~

Lly

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X
In the Matter of the Application of,

GEORGE J. ZALLIE, SR.,

Petitioner,

Index No. 101795/09

DECISION AND ORDER

For an Order Authorizing the Service of Subpoenas for the Depositions of and Production of Evidence by Vanessa Cullins, MD, Vice President for Medical Affairs of Planned Parenthood Federation of America; Karen Shea, MSN, Co-Director, Clinical Services Planned Parenthood Federation of America; Elizabeth Talmont, NP, Co-Director, Clinical Services, Planned Parenthood Federation of America; and the Representative of Planned Parenthood Federation of America who is the Person with the Greatest Relevant Knowledge Regarding the Drafting and Accuracy of Certain Statements, for Use in the Action Pending In the State of New Jersey Entitled:

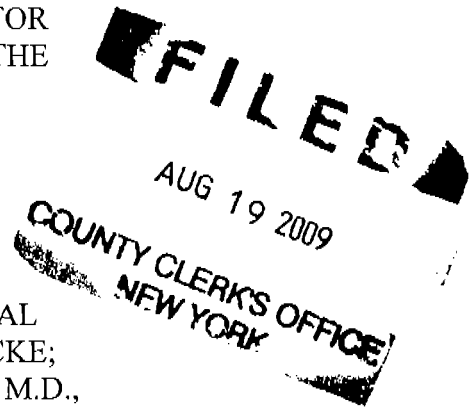
GEORGE J. ZALLIE, SR., GENERAL ADMINISTRATOR AND ADMINISTRATOR *AD PROSEQUENDUM* OF THE ESTATE OF STACY LYN ZALLIE, DECEASED,

Plaintiff,

- against -

DR. STEVEN BRIGHAM, M.D.; AMERICAN MEDICAL SERVICES, P.C.; M. KALITZ; K. CERTI; LINDA LOCKE; DR. BERNARD FRIEDBERG, M.D.; DR. JOHN DOE, M.D., A FICTITIOUS NAME OF A REAL INDIVIDUAL; AND MARY DOE, A FICTITIOUS NAME OF A REAL INDIVIDUAL,

Defendants.



-----X
LOUIS B. YORK, J.:

I. Background

On July 6, 2001 Stacy Lyn Zallie visited Dr. Steven Brigham's American Medical

Services¹ clinic (“the clinic”) to obtain an elective first trimester abortion. Ms. Zallie was a nineteen year old college student at the time of her abortion.

Prior to the procedure Ms. Zallie received a “Fact Sheet on Surgical Abortion” (“Fact Sheet”) handout which Dr. Brigham provided to all his patients. Ms. Zallie also was read the Fact Sheet and she received counseling from defendant Michelle Kalitz, who was employed as a counselor at the clinic. Dr. Brigham had hired Dr. Michael Burnhill in the early 1990s as a private consultant to compose the Fact Sheet and advise him on office procedures for the clinic. Dr. Burnhill, now deceased, was the former Vice President for Medical Affairs of Planned Parenthood Federation of America (“Planned Parenthood”). In addition, he was a private practitioner and he taught and practiced at a medical school.

The Fact Sheet, which is critical to the current petition, consists of sections and statistics which explain to patients how a surgical abortion is performed, the pain involved in the procedures, the impact of the procedure on future fertility, and possible complications that can arise from an abortion. The possible complications portion of the Fact Sheet includes segments on the risk of death. The segment contains the statement that “[t]he risk of a woman dying from a full term pregnancy and childbirth is at least [ten] times greater than that from early abortion.” The emotional reactions segment of the Fact Sheet includes a recommendation for patients to talk to a counselor or psychiatrist but does not specifically address the risk of major depression or chance of suicide.

Ms. Zallie went through with the decision to have the abortion procedure. It appeared

¹ The clinic was referred to as American Women’s Services in Mr. Zallie’s papers, but referred to as American Medical Services in the caption and in Dr. Brigham’s deposition. The Court will refer to the clinic as American Medical Services.

* 4]

there were no medical side effects. However, family and friends close to her allege that in the months following her abortion Ms. Zallie became depressed. Ms. Zallie apparently made several suicide attempts and committed suicide on October 1, 2002, approximately fifteen months after her abortion.

After his daughter's death, plaintiff George Zallie commenced a medical malpractice action in the Superior Court of New Jersey against Dr. Brigham, a number of employees at the clinic, and Ms. Zallie's private psychiatrist Dr. Bernard Friedberg. Zallie v. Brigham et al., Docket No. CAM-L-5528-04 (Superior Ct. N.J. Camden County). Against Dr. Brigham and the clinic employees Mr. Zallie claims that his daughter's suicide was caused by a lack of informed consent about the risks of the procedure and the emotional consequences that could occur. Essentially, Mr. Zallie alleges that his daughter was not fully informed regarding the nature and risks of and the alternatives to the abortion procedure. Mr. Zallie alleges that these risks included severe emotional distress and risk or thoughts of suicide. Among other things, Mr. Zallie challenges the accuracy of the "ten times greater" statement on the Fact Sheet.

In the New Jersey litigation, Mr. Zallie deposed Dr. Brigham about the case in general. When he was asked about the Fact Sheet, Dr. Brigham stated, "Well, first of all, this whole fact sheet as I told you came from Michael Burnhill and Planned Parenthood We got it from there." Brigham Dep. p. 149 ll. 3-10 (Aug. 30, 2005). Later, when asked about some of the particular statistics contained in the Fact Sheet, he reiterated, "Well, first of all, [let's] back up a minute. I didn't write this. This was prepared by an outside consultant who prepared it." Id. p. 156 ll. 7-9. When pressed as to whether he made certain representations about the abortion procedure to Ms. Zallie because of Dr. Burnhill's report, he added,

I rely partly on my own experience and partly on the numerous published studies as well as [the Fact Sheet.] this was drafted by a full professor, a OB/GYN at Robert Woods Johnson Medical School. . . . I believe he is credible. Burnhill told me they were accurate and Planned Parenthood subscribed to them.

Id. p. 157 ll. 20-24, p. 158 ll. 3, 13-14. As to abortion-related suicides, Dr. Brigham said, “I frankly have not heard of suicidal deaths with abortion.” Brigham Dep. p. 53 ll. 4-5 (Dec. 8, 2006). He indicated a general awareness that studies had been done on the issue, but also stated that not only the issue but the studies were politically charged, “caught up in the underlying political controversy about abortion,” and that made it harder to sort through the data. Id. p.53 ll. 22-24.

Subsequently, Mr. Zallie sought to depose Sharon Camp, Ph. D., President and CEO of the Guttmacher Institute, and Lawrence B. Finer, the Institute’s Director of Domestic Research. Guttmacher is a think tank which focuses on issues concerning sexual and reproductive health, including abortion. Mr. Zallie alleged the depositions were necessary because Dr. Camp and Mr. Finer had knowledge of the statistical information about the abortion and pregnancy risks described in the Fact Sheet. The Superior Court of New Jersey executed Letters Rogatory around July 28, 2007 which allowed Mr. Zallie to proceed with the depositions in New York, Georgia and Maryland.

Guttmacher brought an application in New York County to quash the subpoena. Its Order to Show Cause was argued before this Court in September 2008. The Court granted the Guttmacher Institute’s motion to quash, ruling:

The[] two individuals [whose depositions are sought] have no knowledge about the details of the New Jersey action. Accordingly they cannot be deemed to be fact witnesses. If anything they are being pursued as expert witnesses ... the

3rd parties have shown that they do not collect the statistical information that the New Jersey plaintiff seeks. Moreover, they have established that this information is collected . . . by the Center for Disease Control and [generally available and] therefore, it is more appropriate to seek this information from its source. Finally the Court points out that expert witnesses cannot be compelled to testify against their will.

Zallie v. Brigham, et.al., Index No. 104066/2008, Mo. Seq. 1 (Sup. Ct. N.Y. County Sept. 10, 2008).

After his attempt to depose the Guttmacher Institute employees failed, in January 2009 Mr. Zallie filed a motion for an order granting Letters Rogatory with the Superior Court of New Jersey. The Superior Court of New Jersey granted the motion for the examination of Planned Parenthood employees (1) Vanessa Cullins, M.D., the Vice President for Medical Affairs of Planned Parenthood, (2) Karen Shea, M.S.N., Co-Director of Clinical Services for Planned Parenthood, (3) Elizabeth Talmont, N.P., Co-Director of Clinical Services for Planned Parenthood, and (4) a Planned Parenthood representative with the greatest relevant knowledge of the drafting and accuracy of the informational sheet provided to its affiliates. Specifically, Mr. Zallie seeks information regarding how Planned Parenthood obtained the statistics contained on the sheet, the alleged facts and risks relating to major depression and suicide, and the source and accuracy of the "ten times greater" statement included in its sheet and in Dr. Brigham's Fact Sheet.

In February 2009, plaintiff was issued subpoenas pursuant to CPLR 3102(e), enabling him to serve the subpoenas on the Planned Parenthood employees pursuant to the New Jersey Court Order. In response to the subpoenas, in March 2009 Planned Parenthood and its employees (collectively, "Applicants") moved by Order to Show Cause for a protective order

under CPLR § 3103(a). Applicants seek an order quashing petitioner Mr. Zallie's subpoenas for the proposed deponents or, in the alternative, limiting the scope of the depositions to a deponent's personal knowledge of the contents and creation of the Fact Sheet. This application, along with Mr. Zallie's opposition, apparently was referred to this Part as related to the earlier Order to Show Cause to quash the Guttmacher subpoena.

II. Analysis

A protective order may be granted at any time at the court's discretion. CPLR § 3103(a). Among other things, Courts can issue protective orders to quash a subpoena in cases involving harassment of or undue burden on non-parties. The court should not "permit the subpoena power to be used as a tool of harassment or for the proverbial 'fishing expedition'." In the Matter of Reuters Limited v. Dow Jones Telerate, Inc., 231 A.D.2d 337, 342, 662 N.Y.S.2d 450, 454 (1st Dept. 1997).

To depose Applicants in the case at hand, Mr. Zallie must show that the information he seeks is "material and necessary in the prosecution or defense of an action." Schroeder v. Consolidated Edison Co., 249 A.D.2d 69, 70, 670 N.Y.S.2d 856, 857 (1st Dept. 1998); see CPLR § 3101(a)(4). Applicants, who move to quash the subpoena, have the burden of establishing their right to a protective order by showing the information is not material or necessary. See Spectrum Systems International Corporation v. Chemical Bank, 78 N.Y.2d 371, 377, 575 N.Y.S.2d 809, 813 (1991). The material and necessary test is one "of usefulness and reason" and the words are often "interpreted liberally to require disclosure" on facts that are deemed at the court's discretion to have an impact on an action. Allen v. Cromwell-Collier Pub. Co., 21 N.Y.2d 403, 406, 288 N.Y.S.2d 449, 452 (1968). However, where, as here, a party seeks

to depose a nonparty witness, "something more than mere relevance or materiality must be shown." Fraser v. Park Newspapers, Inc., 257 A.D.2d 961, 962, 684 N.Y.S.2d 332, 334 (3d Dept. 1999). In addition to the general test, the party must show that the materials cannot be obtained from one of the defendants or from an alternate source . Murray v. New York City Health & Hospitals Corp., 215 A.D.2d 736, 736-37, 627 N.Y.S.2d 969, 969 (2nd Dept. 1995).

Mr. Zallie argues that, notwithstanding the above, the fact that the New Jersey Court issued Letters Rogatory should be dispositive in this case. According to him, it constitutes a ruling by the New Jersey Court that he has shown the depositions are proper. He also claims that the New York Ex Parte order recognized no privilege or other basis existed to withhold the statistical data from which the Fact Sheet was composed.

The Court disagrees. It is true, as Mr. Zallie argues, that the New Jersey Court issued the Letters Rogatory after a hearing before the trial court. However, especially in light of the broad provisions encompassed in an ex parte order to depose nonparties, it is preferable that the nonparties have the opportunity to present their side on the critical issues. See In re Deloitte, Haskins and Sells, 146 Misc. 2d 884, 886-887, 552 N.Y.S.2d 1003, 1005 (Sup. Ct. N.Y. County 1990); see also In re Asbestos Ins. Coverage Cases, 125 Misc.2d 171, 172, 479 N.Y.S.2d 145, 146 (Sup. Ct. N.Y. County 1984)(regarding right to be heard on issue of who should bear expenses of deposition). Here, when the Letters Rogatory were issued, the nonparties who are the subjects of the subpoena did not have a full and fair opportunity to contest the discovery. Because of this the New Jersey Court did not have the opportunity to rule on the Applicants' current objections. Moreover, the Ex Parte Order simply carried out the mandates of the Letters Rogatory, without reaching or knowing about the potential challenges the nonparties might

assert. Thus, in considering the Order to Show Cause, this Court must determine whether the objections the Applicants currently raise have a valid basis.

Mr. Zallie also is correct that in general a court's inquiry concerning the objections of persons required to testify under a nonparty subpoena is limited to “determining (1) whether the witnesses' fundamental rights are preserved; (2) whether the scope of inquiry falls within the issues of the pending out-of-State action; and (3) whether the examination is fair” Kirkland & Ellis v. Chadbourne & Parke LLP, 176 Misc.2d 73, 77, 670 N.Y.S.2d 753, 756 (Sup. Ct. N.Y. County 1998). However, this does not mean that a court should rubber stamp a foreign court’s Letters Rogatory. Instead, as part of the inquiry outlined above a court retains the power to quash subpoenas due to, inter alia, legislatively enacted privileges, an independent determination that the material at issue is neither critical nor necessary and the desire to prevent unnecessary harassment. Id. Thus, this Court must make its own determination as to the validity of these challenges. See id. at 77, 670 N.Y.S.2d at 757; Trump v. Sulzberger, 20 Misc. 3d 1140(A), 873 N.Y.S.2d 238 (Sup. Ct. N.Y. County 2008) (avail at 2008 WL 4126910, at *3). As already stated, this is especially true where, as here, the nonparties had no notice of the New Jersey hearing and no opportunity to raise the challenges before the New Jersey Court. Compare with In re Welch, 183 Misc.2d 890, 706 N.Y.S.2d 597, 599 (Sup. Ct. N.Y. County 2000)(only limited review was appropriate where California Court considered and denied motion for protective order).

In addition, the Court addresses one more preliminary issue. Applicants argue that Mr. Zallie has not satisfied the burden to show that the drafting and accuracy of the statements in the Fact Sheet are necessary to the underlying litigation. In this, they suggest that the initial burden

here is on Mr. Zallie. Applicants are correct that for a non-party subpoena, the party seeking the subpoena must show that the information sought is material and necessary and unobtainable from other sources. See supra at pp. 6-7. However, it is Applicants' burden as movants to establish their right to a protective order by showing the information is not material or necessary. See Spectrum Systems International Corporation v. Chemical Bank, 78 N.Y.2d 371, 377, 575 N.Y.S.2d 809, 813 (1991). Thus, in reviewing the Order to Show Cause, the Court will determine whether Applicants have shown that the information Mr. Zallie seeks is not material and necessary and can be obtained from other sources.

Now, the court turns to the general contentions of each side. Mr. Zallie argues that the statements made in the Fact Sheet are central to his lack of informed consent claim against Dr. Brigham. Mr. Zallie contends that because the Fact Sheet was inaccurate and did not provide his daughter with enough information on the risks of the procedure her consent was not informed. Mr. Zallie argues that the "ten times greater" statement is incorrect and women, including his daughter, rely on this statement in their decisions to undergo abortions. Mr. Zallie claims that Applicants' depositions are proper here because Planned Parenthood is responsible for distributing the "ten times greater" claim throughout the country. In support of this argument, Mr. Zallie points to Dr. Brigham's deposition testimony that he believed Applicant Planned Parenthood supplied the same Fact Sheet his clinic used to its member affiliates. Mr. Zallie contends that because Dr. Burnhill supplied a Planned Parenthood form to Dr. Brigham and Dr. Brigham relied on this information the accuracy of this statement and the statistical data used to make the Fact Sheet claims is directly relevant and necessary to the underlying litigation's lack of informed consent claim.

Applicants argue that the statements in the sheet are irrelevant to Mr. Zallie's litigation. Also according to Applicants, because Dr. Brigham defends the information provided on the Fact Sheet as accurate, the process of how the Planned Parenthood facts were drafted is irrelevant. During his testimony Dr. Brigham also stated that some changes to the form were made specific to the clinic and that he believed the statistics to be accurate based on the reputability of Planned Parenthood as well as studies he had seen from the Center of Disease Control and other sources. Applicants also argue that Mr. Zallie has failed to show that the depositions of Planned Parenthood employees would change any of the experts' opinions in the underlying litigation and that Dr. Brigham himself never claimed that he relied on incorrect information. Applicants point out that Dr. Brigham instead believes Ms. Zallie agreed to the abortion procedure under informed consent and that he believed the Fact Sheet statistics to be accurate based on his medical knowledge.

For the sake of this Order to Show Cause, the Court accepts Mr. Zallie's position that the lack of information and inaccuracy in the Fact Sheet regarding suicide ideation and risk of major depression is central to his allegation of lack of informed consent. However, to depose these nonparties Mr. Zallie also must prove that the information he seeks cannot be obtained from other available sources. See Tannenbaum v. City of New York, 30 A.D.3d 357, 359, 819 N.Y.S.2d 4, 6 (1st Dept. 2006); Fraser, 257 A.D.2d at 962, 684 N.Y.S.2d at 334. The Court concludes that Mr. Zallie cannot satisfy this second prong of the test and therefore the subpoena should be quashed.

Mr. Zallie argues that since the Fact Sheet was essentially a Planned Parenthood form, Planned Parenthood should account for the methodology and data that formed it. However, as

applicants contend, the information Mr. Zallie seeks, including the accuracy of the “ten times greater” statement, is obtainable from other sources – including Dr. Brigham’s expert, Dr. Delli-Bovi, and Mr. Zallie’s own experts. As applicants point out, in her report Dr. Delli-Bovi cites numerous studies that provide support for the statistics and claims listed on the Fact Sheet and in particular substantiate the “ten times greater” statement. Even though Dr. Burnhill did his own research, the raw data used to prepare the Fact Sheet can be obtained from other sources which are readily available to the public. Therefore, as this Court stated in connection with the Guttmacher subpoenas, “it is more appropriate to seek this information from its source.” Zallie v. Brigham, et.al., Index No. 104066/2008, Mo. Seq. 1 (Sup. Ct. N.Y. County Sept. 10, 2008). Moreover, Mr. Zallie is free to conduct any permissible expert disclosure concerning Dr. Delli-Bovi, to address the matter with his own expert, and to otherwise verify or challenge the accuracy and completeness of the Fact Sheet.

In addition, as applicants state, none of the proposed deponents have first hand knowledge of the Fact Sheet. Even though the individuals Mr. Zallie seeks to depose are employees of Planned Parenthood, none worked in the Medical Division when Dr. Burnhill composed the Fact Sheet and none assisted him in his work for Dr. Brigham. In support of their argument Applicants have submitted affidavits from Dr. Cullins, Ms. Shea and Ms. Talmont – whom, as previously noted, are the parties Mr. Zallie seeks to depose in his subpoenas – that claim that none of the deponents have personal knowledge regarding the drafting or research of the Fact Sheet. In addition, despite Dr. Brigham’s association with Planned Parenthood, Applicants point out that Dr. Brigham allegedly hired Dr. Burnhill in his individual capacity and did not work with Planned Parenthood directly. Moreover, the proposed nonparty deponents do

not have personal knowledge of the facts at issue in the New Jersey litigation. For all these reasons, they “cannot be deemed to be fact witnesses.” Id.

Of course, as Mr. Zallie argues, the lack of knowledge of his case is not automatically dispositive. See Lange v. Roman Catholic Diocese, 170 Misc.2d 43, 45, 648 N.Y.S.2d 265, 266 (Sup. Ct. N.Y. County 1996), aff’d, 245 A.D.2d 188, 665 N.Y.S.2d 661 (1st Dept. 1997). Mr. Zallie contends that he still has the right to discover the information they know regarding the disclosures with which Ms. Zallie was provided. Applicants counter by pointing to this Court’s decision regarding the Guttmacher subpoenas, which the Court has described above. See supra at pp. 4-5. Applicants argue that the present situation is the same. Despite the closer connection between Planned Parenthood and Dr. Burnhill, the proposed Planned Parenthood deponents have no knowledge of facts regarding the underlying litigation and no personal knowledge regarding the drafting of the Planned Parenthood or Burnhill Fact Sheets. Applicants further note that Planned Parenthood does not use the Fact Sheet in question. Mr. Zallie claims that because the Fact Sheet Ms. Zallie was read was a Planned Parenthood form the connection between Planned Parenthood and the underlying litigation is stronger than it was with the Guttenmacher Institute. Furthermore, Mr. Zallie argues that since Judge Freeman in the New Jersey action granted the application for Letters Rogatory it differs from the Guttenmacher Institute application.

The Court agrees with the Applicants. Even where the nonparties’ personal knowledge of the case is not dispositive, it is still a relevant consideration. Lange v. Roman Catholic Diocese, 245 A.D.2d 118, 119, 665 N.Y.S.2d 651, 652 (1st Dept. 1997). Here, it is undisputed that Dr. Burnhill worked in the Medical Division of Planned Parenthood and that the Fact Sheet was a Planned Parenthood form. However, Dr. Burnhill was hired in his individual capacity as a

private consultant. Ideally if Dr. Burnhill was still alive today he would be able to provide Mr. Zallie with the details of the Fact Sheet and his consultation position for Dr. Brigham. Unfortunately, because Dr. Burnhill is deceased this is not an option. The proposed deponents have no knowledge regarding the drafting of the Fact Sheet, any of the circumstances surrounding Ms. Zallie's abortion, or what Dr. Burnhill did for Dr. Brigham in his consulting capacity. The proposed deponents did not even work for the Medical Division at the same time as Dr. Burnhill. Also important here, the Planned Parenthood statement has been revised more than once since Dr. Burnhill used it as the basis for the Fact Sheet. In fact, it is no longer the form Planned Parenthood hands out to its affiliates. Because of their lack of knowledge both in the formation of the Fact Sheet given to Ms. Zallie or regarding any of the facts of the underlying case, they cannot be fact witnesses. See generally id. at 45, 648 N.Y.S.2d at 266 (decision that Cardinal would not be deposed was upheld, based on Cardinal's lack of knowledge of facts of Texas actions).

Mr. Zallie also cites the 2006 deposition of Medical Director Carol Ball in Planned Parenthood of Minnesota/South Dakota v. Rounds, 372 F.3d 969 (8th Cir. 2004)(involving another issue in the action). According to that deposition, a Planned Parenthood affiliate had to obtain the approval of Ms. Talmont or Ms. Shea in order to make a change to the Planned Parenthood form. Mr. Zallie argues that since Planned Parenthood is distributing the "ten times greater" statement across the country then its employees should be able to testify how the statistics for the Planned Parenthood form, that were the basis for Dr. Brigham's Fact Sheet, were established. However, this argument is not persuasive. For one thing, in that case Planned Parenthood was a party to the litigation and its own policies and practices were directly at issue.

There has been no evidence presented that Dr. Brigham's clinic is a Planned Parenthood affiliate. There is also no evidence that Dr. Brigham's clinic was obliged to get any changes to the Fact Sheet approved by Ms. Talmont or Ms. Shea, or indeed anyone at Planned Parenthood. Indeed, it appears that Ms. Zallie was not given an updated Planned Parenthood handout; and yet, it also appears that Dr. Brigham's clinic did not consult Planned Parenthood regarding changes or regarding its failure to make changes.

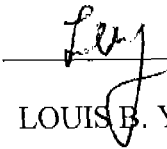
The Court notes that Applicants argue that through the subpoenas Mr. Zallie improperly seeks expert testimony without stating this intention explicitly. In addition, Applicants argue that the non-party subpoenas issued are illegitimate and constitutes harassment of Planned Parenthood and its employees. In support of both of these positions, applicants point to Mr. Zallie's counsel's numerous lawsuits against Planned Parenthood in other states and his repeated efforts in those cases to find a link between suicide and abortions. Since the Court has already made a determination on the Applicant's request for a protective order it finds it unnecessary to address either of these arguments. It does note that it is unwilling in any event to speculate as to the ulterior motives of the attorneys litigating before it; and it does not encourage counsel to do so without substantial evidence to support their arguments.

The Court appreciates the tremendously difficult and emotional subject matter in the underlying litigation, and the profound concerns all parties intend to protect in litigating this Order to Show Cause. It is the Court's role to balance these interests and reach the most fair result possible. Here, as Applicants have shown that it is not necessary to depose the Planned Parenthood representatives in order to obtain the statistical material used to prepare the Fact Sheet, it is

ORDERED that Planned Parenthood's and its employees' request for a protective order to quash the subpoenas is granted.

Dated: August 13, 2009

ENTER:



LOUIS B. YORK, J.S.C.

**LOUIS B. YORK
J.S.C.**

FILED
AUG 19 2009
COUNTY CLERK'S OFFICE
NEW YORK