SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3

Index No. 101932/2007
Motion Nos.: 006
007
008

WALTER N. JOHNSEN, JR., Individually, and DEBRA JOHNSEN, Decedent by WALTER N. JOHNSEN, JR., as ADMINISTRATOR

Plaintiffs

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

ROBERT J. SILICH, M.D., ROBERT J. SILICH, M.D., P.C., DANIEL ROESLER, M.D. and STATEN ISLAND UNIVERSITY HOSPITAL,

Defendants

The following items were considered in the review of the following motions to Strike Defendants' Answers, Compel Production, and Entry of Default Judgment, and cross-motions to Compel Production, Reargue, Vacate Plaintiff's Demand for Disclosure, and a Protective Order.

Papers	Numbered
Plaintiff Notice of Motion and Affidavits Annexed	1
Silich Notice of Cross-Motion and Answering Affidavits	2
SIUH Notice of Cross-Motion and Answering Affidavits	3
Plaintiff Replying and Answering Affidavits	4
SIUH Replying Affidavits	5
Silich Supplemental Response	6
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Plaintiff Walter N. Johnsen, Jr. (hereinafter "Johnsen") moves pursuant to CPLR §§ 3124 and 3126 for an order striking the answers of Defendants Robert J. Silich, M.D., Robert J. Silich, M.D., P.C. (collectively "Silich") and Staten Island University Hospital (hereinafter "SIUH"). Plaintiff's motion is denied.

Plaintiff moves for an order to compel production pursuant to CPLR 3042(c) directing Defendants to produce a detailed Bill of Particulars setting out the facts and basis for assertions of

privilege supporting each alleged affirmative defense. Plaintiff's motion is granted in part and denied in part.

Plaintiff moves to have a default judgment entered pursuant to CPLR § 3215 against Defendant Daniel Roesler, M.D. (hereinafter "Roesler") for failure to answer after having appeared in the action. Plaintiff's motion is denied.

Silich cross-moves for an order to compel production pursuant to CPLR § 3124 directing Plaintiff to produce authorizations to obtain Plaintiff's medical records from other physicians who allegedly treated Plaintiff for the condition at issue. Silich's motion is denied.

SIUH cross-moves to reargue pursuant to CPLR § 2221(d) for an order correcting an alleged misstatement contained in a prior Order issued by this Court on December 13, 2007. SIUH's motion is denied.

SIUH cross-moves to vacate Plaintiff's Demand for Production of Documents and Things ("Discovery Demand") dated October 6, 2008 due to its overly broad and unduly burdensome nature. SIUH's motion is denied.

SIUH cross-moves for a protective order pursuant to CPLR § 3103 to protect Defendants from their duty to respond to Plaintiff's Discovery Demand dated October 6, 2008. SIUH's motion is granted.

PROCEDURAL HISTORY

Plaintiff commenced this action on May 8, 2007 by filing a summons and complaint. SIUH moved to dismiss Plaintiff's claims on June 28, 2007. SIUH's motion was denied by Order of the Court dated December 13, 2007**,** but the Court granted SIUH's motion to strike Plaintiff's complaint. Plaintiff submitted an amended complaint on August 19, 2008 and SIUH served an answer on

September 18, 2008.

Plaintiff served a Discovery Demand on October 6, 2008 to Defendants Silich and SIUH. Plaintiff also served a Demand for a Verified Bill of Particulars on October 23, 2008 regarding the affirmative defenses asserted by Defendants. Silich responded to both of Plaintiff's demands on December 10, 2008. SIUH responded to Plaintiff's Discovery Demand on March 27, 2009. To date, SIUH has not responded to Plaintiff's Demand for a Verified Bill of Particulars.

FACTS

This is an action for personal injuries allegedly sustained by Plaintiff as a result of Defendants' alleged medical malpractice. Plaintiff visited Silich's office on June 6, 2002 for his condition that consisted of a lump on his chest. Silich was employed by SIUH as the Director of Surgical Oncology and at all relevant times was a member of SIUH's staff. Silich allegedly misdiagnosed Plaintiff's condition as a cyst that could be easily removed in an office setting. Silich attempted to remove the cyst in a surgical procedure on July 2, 2002. The "cyst" was actually a malignant form of cancer known as leiomyosarcoma**.** After this procedure, Silich assured Plaintiff that he had removed all of the "cyst." However, the condition returned twice more and Silich performed the same procedure on August 6, 2003 and November 2, 2004. SIUH became involved in Plaintiff's treatment with regard to the procedure on August 6, 2003 and participated in such treatment until November 18, 2004. Roesler, a surgeon on the staff of SIUH, was the assistant surgeon for the August 6, 2003 procedure and did not participate in Plaintiff's treatment at any time thereafter. After each treatment, Silich assured Plaintiff that the "cyst" had been completely removed. After the third procedure, Plaintiff sought alternative treatment from Memorial Sloan-Kettering Hospital. Sloan-Kettering diagnosed the condition as leiomyosarcoma and Plaintiff continued his treatment at that facility from then on.

PLAINTIFF'S MOTIONS

1. Motion to Strike Defendants' Answers

Plaintiff moves pursuant to CPLR 3126 for an order striking Defendants' answers for failure to adequately respond to Plaintiff's Discovery Demand. Plaintiff's motion is denied.

Plaintiff contends that his Discovery Demand was met with wholly insufficient responses from both Silich and SIUH. Plaintiff argues that Defendants' responses were replete with disingenuous objections and unsubstantiated assertions of privilege. Plaintiff asserts that these insufficient responses require this Court to strike Defendants' answers pursuant to CPLR 3126.

Defendants respond that Plaintiff's Discovery Demand were overly broad and unduly burdensome and that compliance was impossible due to the vagueness of Plaintiff's demands. Defendants responded to Plaintiff's Discovery Demand, but those responses were deemed unsatisfactory by Plaintiff.

To invoke the drastic remedy of striking a pleading, the Court must determine that the party's failure to comply with a disclosure order was the result of willful, deliberate, and contumacious conduct or its equivalent. The willful and contumacious character of a party's conduct can be inferred from his or her repeated failures to appear for examination before trial or respond to discovery demands, coupled with inadequate excuses for these defaults.[1] The determination whether to strike a pleading for failure to comply with court-ordered disclosure lies within the sound discretion of the Court.[2]

---

[1] *Bates v. Baez*, 299 A.D.2d 382 (2d Dept 2002); *Patterson v. Greater N.Y. Corp. of Seventh Day Adventists*, 284 A.D.2d 382 (2d Dept 2001)

[2] *Fishbane v Chelsea Hall, LLC*, 2009 NY Slip Op 6504, 2 (2d Dept 2009); *Mir v. Saad*, 2008 NY Slip Op 7099, 1 (2d Dept 2008)

Plaintiff's motion to strike Defendants' answers pursuant to CPLR 3126 due to failure to adequately respond to discovery demands is denied. Plaintiff's discovery requests are indeed confusing and, with respect to numerous demands, overly broad and unduly burdensome. Defendants' failure to respond to Plaintiff's Discovery Demand are not the result of deliberate and contumacious conduct. Defendants also indicate that they would not refuse to respond to a reasonable demand for disclosure. Rather, Defendants assert a reasonable excuse that, due to the overly broad and unduly burdensome nature of the demands in their current form, Defendants cannot possibly comply. For these reasons, the motion to strike Defendants' answers for failure to comply with Plaintiff's Discovery Demand must be denied.

2. Motion to Compel Production of Bill of Particulars

Plaintiff moves for an order to compel production pursuant to CPLR 3042© directing Defendants to produce a detailed Bill of Particulars setting out the facts and basis supporting each alleged affirmative defense. Plaintiff's motion is granted in part and denied in part.

Plaintiff served a demand for a verified bill of particulars on Defendants demanding that Defendants set forth the facts supporting each of their affirmative defenses.

Defendants contend that the demands are either overly broad and unduly burdensome in nature, or not suitable for response at this stage of proceedings. Due to this, Defendants contend they should not be required to respond to such a demand.

The purpose of a bill of particulars is to amplify the pleadings, limit the proof and prevent surprise at the trial. Matters which are evidentiary in nature or require expert opinion testimony are outside the scope of a bill of particulars.[3] A court will not prune an improper demand in order to save

[3] *Bouton v. County of Suffolk*, 125 A.D.2d 620, 621 (2d Dept 1986)

the nonobjectionable questions.[4]

Defendants are compelled to submit a bill of particulars with regard to the first item in Plaintiff's demand. All other items are overly broad and unduly burdensome. To the extent that any relevant demands exist in the numerous paragraphs of items 2 through 4, this Court will not prune an improper demand.[5]

The first item in the demand for a verified bill of particulars concerns Defendants' affirmative defense that Plaintiff's claims are barred by the applicable statute of limitations. The questions contained in the first item of Plaintiff's demand for a bill of particulars are not overly broad or unduly burdensome. The burden of establishing this affirmative defense rests with Silich. Accordingly, since the first item is not overly broad or unduly burdensome, and Silich bears the burden of establishing the affirmative defense, Silich must respond to item number 1 of the demand for a verified bill of particulars, which seeks amplification of this issue.[6]

The entire line of questioning in the second and third items of Plaintiff's demand for a verified bill of particulars are overly broad and unduly burdensome. To the extent this Court can understand Plaintiff's demands in the third item, they are impermissible since they require expert testimony and are evidentiary in nature.[7] Therefore, Defendants cannot be compelled to respond.

The fourth item in Plaintiff's bill of particulars concerns whether Plaintiff was contributorily negligent. Plaintiff's questions are overly broad and unduly burdensome and Defendants cannot be compelled to respond. Though Silich has allegedly responded to the fourth item in an insufficient

---

[4] *Haszinger v. Praver*, 12 A.D.3d 485 (2d Dept 2004); *Nazario v. Fromchuck*, 90 A.D.2d 483 (2d Dept 1982)

[5] *Haszinger*, supra

[6] *Forney v. Huntington Hospital*, 134 A.D.2d 405 (2d Dept 1987)

[7] *Bouton*, supra

manner, Silich will not be compelled to respond further to the overly broad and unduly burdensome line of questioning until Plaintiff submits an amended demand for a verified bill of particulars that complies with CPLR 3042. As such, SIUH also cannot be compelled to answer the fourth item.

SIUH is compelled to provide a bill of particulars in response to the first item because SIUH failed to respond entirely to Plaintiff's demand and the first item was not overly broad and unduly burdensome and ought to have been provided. SIUH is not compelled to respond to demand items 2 through 4 since those items have been held to be overly broad and unduly burdensome.

3. Motion to Enter Default Judgment against Roesler

Plaintiff moves to have a default judgment entered pursuant to CPLR 3215 against Roesler for failure to answer after having appeared in the action. Plaintiff's motion is denied.

Plaintiff contends that the Order dated December 13, 2007, issued as a result of SIUH's pre-answer motion to dismiss, contains language suggesting that Roesler made an appearance in this action. Defendants contend that Roesler did not voluntarily appear in this action since he was never served with a summons and complaint, did not confer with SIUH's counsel prior to the filing of the motion to dismiss, and did not authorize SIUH's counsel to act on his behalf.

In order to be deemed to have participated in the action, a defendant must be properly served with process, voluntarily elect to participate in the action, or forego any objection to jurisdiction. The appearance of an attorney, without more, is insufficient to warrant a finding that the attorney was authorized to act on behalf of the named defendant.[8]

Plaintiff's motion to enter default judgment against Roesler must be denied since Roesler

[8] *Skyline Agency Inc. v. Ambrose Coppotelli*, 117 A.D.2d 135 (2d Dept 1986)

never voluntarily appeared in the action.[9] Indeed, Roesler was never properly served in this action, never conferred with SIUH's counsel prior to the filing of the motion to dismiss, and did not authorize SIUH's counsel to act on his behalf. Insofar as Plaintiff believes the Order indicates that Roesler has made an appearance and thus waived any objection to jurisdiction, Plaintiff misapprehends the language of the Order. The correct interpretation of the language in the Order is explained in further detail in the section regarding SIUH's Motion to Reargue.

SILICH MOTION

1. Cross-Motion to Compel Production

Silich cross-moves for an order to compel production pursuant to CPLR 3124 directing Plaintiff to produce authorizations to obtain Plaintiff's medical records from other physicians who allegedly treated Plaintiff for the condition at issue. Silich's motion is denied.

Silich contends that he is entitled to authorizations to acquire Plaintiff's medical records from two physicians who allegedly treated Plaintiff for the condition at issue. Silich discovered only the last names of two doctors allegedly associated with Plaintiff's treatment through a list of physicians that issued prescriptions filled at a local pharmacy. These two doctors are identified on the list as "Dr. Weissman" and "Dr. Israeli." No further information concerning the identities of Dr. Weissman and Dr. Israeli have been asserted, other than their last names.

Plaintiff argues that he has already provided Defendants with HIPAA compliant authorizations for the records of the physicians that Plaintiff could identify as having treated or cared for him regarding the condition at issue. Plaintiff contends that Dr. Weissman and Dr. Israeli have provided no treatment for the injuries at issue. Indeed, Plaintiff has also indicated that he is prepared to submit an affidavit stating that he has no knowledge of any information pertaining to the identity

[9] *Skyline,* supra; *Wickham v. Liberty Mut. Ins. Co.*, 73 A.D.2d 742 (3d Dept 1979)

of the remaining two doctors, Dr. Weissman and Dr. Israeli. Defendant has not provided this Court with any information regarding the identity of the two remaining physicians or their respective treatment rendered to the Plaintiff for the condition at issue.

The waiver of the privilege by a plaintiff is limited to those parts of the body, and those conditions claimed to have been caused or, for pre-existing injuries or conditions, to have been exacerbated or activated by the conduct of the defendant. It does not extend to unrelated injuries, illnesses, or treatments.[10] The burden is on the party seeking disclosure to demonstrate that the individual's physical or mental condition is in controversy.[11]

Therefore, since Silich has failed to even identify the doctors, much less satisfy his burden of establishing the two doctors' connection to Plaintiff's treatment for the condition at issue, Silich has not sufficiently demonstrated that they are entitled to the disclosure requested. Silich's motion to compel production of HIPAA-compliant authorizations must be denied.

SIUH MOTIONS

1. Cross-Motion to Reargue

SIUH cross-moves to reargue pursuant to CPLR 2221(d) for an order correcting an alleged misstatement contained in a prior Order issued by this Court on December 13, 2007. SIUH's motion is denied.

SIUH contends that the Court mistakenly included Roesler in its Order dated December 13, 2007, which caused it to appear that Roesler participated in SIUH's motion to strike Plaintiff's

---

[10] *Weber v. Ryder TRS, Inc.*, 49 A.D.3d 865, 854 N.Y.S.2d 480 (2d Dept 2008); *Gill v. Mancino*, 8 A.D.3d 340, 777 N.Y.S.2d 712 (2d Dept 2004)

[11] *Dillenbeck v. Hess*, 73 N.Y.2d 278 (1989) *Conlin v. Birritella*, 244 A.D.2d 381 (2d Dept 1997)

complaint.[12] SIUH asks the Court to clarify its prior statement deleting any reference to Roesler having participated in the motion that was the subject of the Order.

Plaintiff contends that the motion to reargue is untimely since the language of CPLR 2221(d) indicates that such a motion "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry."

Reargument may be granted where the Court has overlooked or misapprehended some factual matter or legal authority.[13] Regardless of statutory time limits concerning motions to reargue, every court retains continuing jurisdiction to reconsider its prior interlocutory orders during the pendency of the action.[14]

Assuming, arguendo, that SIUH's motion to reargue is properly before the Court, SIUH nevertheless misapprehends the language in the December 13, 2007 Order. The language in the Order is correct, even though neither party gives the Order its correct interpretation. The Court was merely stating that the motion to dismiss applied to SIUH insofar as SIUH sought to dismiss Plaintiff's claims that its alleged vicarious liability resulted from the actions of Roesler. A review of SIUH's Notice of Motion shows that SIUH made the motion to dismiss on its own behalf, mentioning Roesler only to the extent that SIUH may have been held vicariously liable for Roesler's actions. The Order clearly states that Plaintiff's claims may have been timely since the continuous treatment doctrine could have applied to the relationship between SIUH and Dr. Silich. Any reference to Dr. Roesler was made simply to distinguish between SIUH's potential vicarious liability resulting from the actions of Roesler as opposed to Silich. Therefore, SIUH's motion to reargue is denied.

---

[12] SIUH Cross-Motion Exhibit E

[13] *Grossman v. State*, 25 Misc. 2d 47 (Ct. Cl. 1960)

[14] *Liss v. Trans Auto Systems, Inc.,* 68 N.Y.2d 15 (1986); *In re Estate of Burns*, 228 A.D.2d 674 (2d Dept 1996)

2. Cross-Motion to Vacate Plaintiff's Discovery Demand

SIUH cross-moves to vacate Plaintiff's Discovery Demand dated October 6, 2008 due to its overly broad and unduly burdensome nature. SIUH's motion is denied.

SIUH contends that Plaintiff's Discovery Demand are so overly broad, unduly burdensome, vague and irrelevant as to warrant the Demand being vacated in its entirety. SIUH presents *Andon v. Mott Street Associates*[15] as supporting its argument that Plaintiff's Discovery Demand must be vacated because his demands are of "hypothetical relevance" and unsupported by any factual demonstration of relevance

Plaintiff believes that its demands are narrowly tailored to allow compliance and reasonably calculated to lead to admissible evidence.

A court may properly vacate a plaintiff's discovery notice when most of the demands contained therein are palpably improper, in that they either seek irrelevant information, are vague, or are of an overbroad and burdensome nature.[16] A court will not prune an improper demand in order to save the nonobjectionable aspects.[17]

Though SIUH believes *Andon* supports its position that Plaintiff's demands are of "hypothetical relevance" and unsupported by any factual demonstration of relevance, the opposite is true. Whereas *Andon* concerned a tenuous and speculative connection between the IQ of a mother and the extent to which her intelligence is passed to her offspring, this case deals with a much more established connection between Plaintiff's injuries that may or may not have resulted from alleged medical malpractice. That Plaintiff was a patient of Defendants and underwent several procedures

---

[15] *Andon v. Mott St. Assocs.*, 94 N.Y.2d 740 (2000)

[16] *Bettan v. Geico Gen. Ins. Co.*, 296 A.D.2d 469 (2d Dept 2002)

[17] *Haszinger,* supra; *Nazario;* supra

done or overseen by Defendants presents a sufficient factual demonstration that several of Plaintiff's demands are factually relevant. Because SIUH has failed to establish that most of the Discovery Demand is of hypothetical relevance or overly broad, and a significant number of demands are indeed proper, this Court will not vacate the demand.

Therefore, this Court rejects SIUH's contention that Plaintiff's Discovery Demand should be vacated in their entirety. However, for the reasons stated below, we agree that SIUH should not be compelled to respond to the particular discovery demands that are, in many respects, overly broad, unduly burdensome or vague. In addition, certain of the demands seek information that is irrelevant to Plaintiff's cause of action.[18]

3. Cross-Motion for Protective Order

SIUH cross-moves for a protective order pursuant to CPLR 3103 to protect Defendants from their duty to respond to Plaintiff's Discovery Demand dated October 6, 2008. SIUH's motion is granted.

SIUH argues in the alternative that, if Plaintiff's Discovery Demand is not vacated in its entirety, Defendants should nevertheless receive a Protective Order to relieve them of their duty to respond to the demands that are overly broad, unduly burdensome, vague or irrelevant.

As per the findings above that Roesler has not been properly served and has not appeared in this action, all discovery requests as they pertain to Roesler, including contracts, compensation, education, training, residency, and credentials in general are denied since any such disclosure would be unlikely to result in the finding of admissible evidence. The only discoverable information pertaining to Roesler are those records that directly pertain to Roesler's participation and performance in the August 6, 2003 procedure, including the text of any report dictated by Roesler

[18] *Ranne v. Huff*, 11 A.D.3d 952, 953 (4th Dept 2004); *Grosso Moving & Packing Co. v. Damens*, 261 A.D.2d 339 (1st Dept 1999)

subsequent to the procedure that concerned the procedure, since such disclosure may lead to admissible evidence to be used against other Defendants.

In a medical malpractice action, vast categorical demands for bylaws of hospital and its medical staff, as well as rules, regulations, policies, and procedures for numerous separate departments are overly broad and unduly burdensome.[19] Discovery demands must be sufficiently narrow in scope and germane to the cause of action.[20] The Court possesses broad discretion to deny demands that are unduly burdensome or that seek irrelevant or improper information.[21] The burden of establishing that the documents sought are covered by a certain privilege rests on the party asserting the privilege.[22]

While several of plaintiff's demands are germane to the action and phrased so as to state intelligible requests sufficiently narrow to permit responses, the numbers listed below are overly broad, unduly burdensome, irrelevant or vague, and therefore warrant a protective order. SIUH is directed to comply therewith

Demands 8 - 12, 15 - 19, 21 - 73, 76, 77, 84, 85, 89, 102 and 103 request information that is not material or necessary to this action, overly broad and unduly burdensome, or vague. The above demands relate to both Silich and SIUH. In addition, demands 106 through 108, as they have been made upon Silich, likewise warrant a protective order for the same reasons. The remaining demands are sufficiently narrow and germane to the issue of the plaintiff's cause of action so that SIUH is

---

[19] *Brandes v. North Shore Univ. Hosp.*, 1 A.D.3d 550 (2d Dept 2003)

[20] *Greenman-Pedersen, Inc. v. Zurich Am. Ins. Co.*, 2008 NY Slip Op 6631 (2d Dept 2008)

[21] *Feger v. Warwick Animal Shelter*, 2008 NY Slip Op 10122, 2 (2d Dept 2008); *Scalone v. Phelps Memorial Hosp. Center*, 184 A.D.2d 65 (2d Dept 1992)

[22] *Anonymous v. High School for Envtl. Studies*, 2006 NY Slip Op 6349, 5 (1st Dept 2006)

compelled to answer them, subject to the following restrictions:[23]

(1) Demand #1 - SIUH shall furnish a copy of the discoverable chest x-ray in its possession upon Plaintiff's forwarding of a check in the amount of $20.00 to cover copying costs. Such a demand shall specifically include any billing records not already provided. To the extent that SIUH possesses or controls no further records or communications pertaining to the treatment and care of Plaintiff, SIUH should prepare an affidavit to that effect.

(2) Demand #3 - SIUH shall comply, provided that all reference to the cost of such insurance, as well as any reference to unrelated treatment locations may be redacted as per SIUH's request.

(3) Demands #4 through 6 - SIUH shall comply subject to SIUH's ability to show that such correspondence is not discoverable due to a specific privilege.

(4) Demand #7 - SIUH is required to identify and provide the employment status, both during the time of treatment and presently, of the signatories to documents in Plaintiff's medical chart.

(5) Demand # 101 - SIUH is permitted to redact all reference to specific compensation in the agreements as per SIUH's request.

Specifically, demands 30 through 73 are wholly irrelevant to the case at hand, unduly burdensome to defendants and are stricken from Plaintiff's demand for discovery.

In response to Plaintiff's Discovery Demand, Defendants failed to assert anything more than

---

[23] *Greenman-Pedersen,* supra; *Peppers v. Peppers,* 266 A.D.2d 193 (2d Dept 1999); *Albert v. Time Warner Cable*, 255 A.D.2d 248 (1st Dept 1998); *Zohar v. Hair Club for Men*, 200 A.D.2d 453 (1st Dept 1994)

boilerplate claims of privilege, which are insufficient as a matter of law.[24] CPLR 3122 (b) sets out specific requirements for a detailed privilege log.[25] Defendants failed to comply with any part of CPLR 3122. With respect to the demands that were not the subject of this Protective Order, and to which Defendants have asserted a claim of privilege, Defendants shall comply with CPLR 3122 and either provide plaintiff with the requested documents, or adequately establish the applicability of the asserted privilege to the disclosure sought.

Accordingly, it is hereby:

ORDERED, that Plaintiff Johnsen's motion to strike the answers of Defendants Silich and SIUH is denied; and it is further

ORDERED, that Plaintiff Johnsen's motion to compel Defendants Silich and SIUH to serve a compliant bill of particulars is granted in part and denied in part; and it is further

ORDERED, that Plaintiff Johnsen's motion to enter a default judgment against Defendant Roesler is denied; and it is further

ORDERED, that Defendant Silich's cross-motion to compel Plaintiff Johnsen to provide authorizations to obtain medical records from additional doctors is denied; and it is further

ORDERED, that Defendant SIUH's cross-motion to reargue an Order issued December 13, 2007 to correct a misstatement therein is denied; and it is further

---

[24] *Matter of Condon v. Inter-Religious Found. for Community Org., Inc.,* 2008 NY Slip Op 28005 (N.Y. Sup. Ct. 2008); *Anonymous v. High School for Envtl. Studies*, 2006 NY Slip Op 6349 (N.Y. App. Div. 1st Dep't 2006); *New York State Electric & Gas Corp. v. Lexington Ins. Co.*, 160 A.D.2d 261 (N.Y. App. Div. 1st Dep't 1990)

[25] *Matter of Condon*, supra; *Matter of Stenovich v Wachtell, Lipton, Rosen & Katz*, 195 Misc 2d 99, 756 NYS2d 367 (Sup Ct, NY County 2003)

ORDERED, that Defendant SIUH's cross-motion to vacate Plaintiff Johnsen's Discovery Demand is denied; and it is further

ORDERED, that Defendant SIUH's cross-motion for a protective order relieving them of the duty to respond to any improper demands in Plaintiff Johnsen's Discovery Demand is granted, subject to the following restrictions:

(1) Demand #1 - SIUH shall furnish a copy of the discoverable chest x-ray in its possession upon Plaintiff's forwarding of a check in the amount of $20.00 to cover copying costs. Such a demand shall specifically include any billing records not already provided. To the extent that SIUH possesses or controls no further records or communications pertaining to the treatment and care of Plaintiff, SIUH should prepare an affidavit to that effect,

(2) Demand #3 - SIUH shall comply, provided that all reference to the cost of such insurance, as well as any reference to unrelated treatment locations may be redacted as per SIUH's request,

(3) Demands #4 through 6 - SIUH shall comply subject to SIUH's ability to show that such correspondence is not discoverable due to a specific privilege,

(4) Demand #7 - SIUH is required to identify and provide the employment status, both during the time of treatment and presently, of the signatories to documents in Plaintiff's medical chart, and

(5) Demand # 101 - SIUH is permitted to redact all reference to specific compensation in the agreements as per SIUH's request; and it is further

All parties shall appear in DCM Part 3 for a compliance conference on **February 9, 2010** at 9:30 a.m.

ENTER,

DATED: January 29, 2010

Joseph J. Maltese
Justice of the Supreme Court