

Noble v Laufer

2011 NY Slip Op 30060(U)

January 7, 2011

Supreme Court, New York County

Docket Number: 105033/09

Judge: Richard B. Lowe

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

PRESENT: Joan B. Lolis

PART 6

Index Number : 105033/2009

NOBLE, LILA

vs

LAUFER, LUDWIG GERALD

Sequence Number : 002

STRIKE A PLEADING

INDEX NO. _____

MOTION DATE 9/29/10

MOTION SEQ. NO. _____

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

1-8

9-11

12-15

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER

FILED

JAN 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/7/11

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
LILA NOBLE,

Plaintiff,

Index No. 105033/09

-against-

Decision and Order

LUDWIG GERALD LAUFER,

Defendant.

-----X
JOAN B. LOBIS, J.S.C.:

Defendant Ludwig Gerald Laufer, M.D., moves for an order, pursuant to C.P.L.R. § 3125, dismissing plaintiff Lila Noble's complaint for failure to comply with outstanding discovery demands and orders, or in the alternative precluding plaintiff from offering evidence at the time of trial related to discovery duly demanded but not provided, or in the alternative compelling plaintiff to comply with the outstanding discovery demands.

FILED

JAN 11 2011

Ms. Noble brings this case sounding in medical and psychiatric malpractice and lack of informed consent against her long-treating psychiatrist, Dr. Laufer. Ms. Noble alleges that Dr. Laufer prescribed improper and contraindicated medications in excessive doses and dangerous combinations to her and engaged in a sexual relationship with her between 1995 and 2008, causing her severe psychological trauma, exacerbation of a pre-existing major depressive disorder, and substance dependency. The bill of particulars identifies over fifty different medications that plaintiff claims were improperly prescribed by Dr. Laufer.

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During the ongoing discovery period, defendant obtained plaintiff's collateral source records (not attached to the motion). Defendant apparently culled the information from the collateral

source record and his own treatment records for plaintiff (also not attached to the motion), and demanded HIPAA-compliant authorizations for entities or treaters identified, in pertinent part, as: Meadowlands Hospital Medical Center; Roosevelt Hospital; Manhattan Center for Pain Control; Dr. Michael Burnett (identified as a rheumatologist); Dove Open MRI; Dr. Richard Braver (identified as a podiatrist); Dr. Thomas Cusumano; Active Foot & Ankle Care; Dr. Patel; and PMSI Services. Plaintiff objected to providing authorizations for Meadowlands Hospital Medical Center, PMSI Services, Dr. Patel, Manhattan Center for Pain Control, and Roosevelt Hospital on the grounds that she had no knowledge or information of ever having treated with said providers. She objected to providing authorizations for Michael Burnett, M.D., Dove Open MRI, Richard Braver, M.D., Thomas Cusimano, M.D., and Active Foot and Ankle Care on the grounds that she did not treat with those providers for injuries alleged in the action or for conditions medically related to those injuries. In response, defendant identified the first five treaters as treaters named in Dr. Laufer's records as having treated plaintiff concurrently to his treatment. Defendant also contended that the second five treaters treated were relevant because plaintiff claimed exacerbation of exacerbation of pre-existing conditions as her injuries in her bill of particulars.

Plaintiff has not provided authorizations for the aforementioned treaters, but has not moved or cross-moved for a protective order and here simply opposes the motion. Dr. Laufer contends, by his attorney, that the authorizations are "highly relevant" to the injuries that plaintiff alleges and to conditions medically related to those injuries. He believes that plaintiff treated with the aforementioned providers for pain management and thyroid problems, conditions for which Dr. Laufer had prescribed medications. Since plaintiff alleges that Dr. Laufer improperly prescribed excessive and contraindicated medications, he believes he is entitled to these providers' records.

Plaintiff contends, by her attorney, that she has no knowledge of ever having treated with Meadowlands Hospital Medical Center, Dr. Patel, and Manhattan Center for Pain Control. She further objects to defendant's demand for authorizations for Dr. Burnett, Dove Open MRI, Dr. Richard Braver, Dr. Thomas Cusimano, and Active Foot & Ankle Care on the grounds that she did not treat with such providers for injuries alleged in this action or for conditions medically related to such injuries. She fails to address the other outstanding authorizations for Roosevelt Hospital and PMSI Services, although she had previously objected on the grounds that she has no knowledge of ever having treated with those providers. Plaintiff maintains that her objections to providing the enumerated authorizations were made in good faith and that she has not willfully nor contumaciously disobeyed discovery orders. She argues that defendant has not demonstrated that the records are relevant or necessary to defending plaintiff's claims arising out of Dr. Laufer's commencement of a sexual relationship with plaintiff.

Under C.P.L.R. § 3101(a),

'full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.' What is 'material and necessary' is left to the sound discretion of the lower courts and includes 'any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason.'

Andon v. 302-304 Mott St. Assocs., 94 N.Y.2d 740, 746 (2000) (citation omitted); C.P.L.R. § 3101(a). Privileged matter is generally not discoverable. C.P.L.R. § 3101(b). By commencing a medical malpractice suit, a plaintiff waives the physician-patient privilege with respect to her "relevant past medical history." Gill v. Mancino, 8 A.D.3d 340 (2d Dep't 2004). Plaintiffs do not waive the physician-patient privilege with respect to "unrelated illnesses or treatments." Id. at 341.

Central to this case is plaintiff's allegation that, over a period of approximately fourteen years, defendant over-prescribed or improperly prescribed more than fifty different medications, causing her severe psychological trauma, exacerbation of a pre-existing mental health disorder, and substance dependency. Many of the medications named in the bill of particulars relate to pain management, depression, and drug dependency. Due to the broad scope and time frame of plaintiff's allegations and injuries, defendant has demonstrated that he is entitled to discovery related to treaters who treated plaintiff for pain or who provided treatment related to the alleged substance dependency, which would include treaters who prescribed her medications. Plaintiff has failed to rebut this demonstration with any grounds to protect these records.

At this point, defendant has failed to articulate the materiality or necessity of obtaining records from Dove Open MRI, ostensibly a radiology facility that provides imaging services and not a facility that would provide treatment related to pain, pain management, mental health treatment, or substance dependency. Plaintiff shall not be compelled to provide an authorization for Dove Open MRI.

Obviously, plaintiff shall not be compelled to provide authorizations for treaters that she never treated with. However, there is no statement from plaintiff herself that she did not treat with the providers that her attorney states she has no "knowledge or information of having treated with." If she has not already done so, within fifteen (15) days of the date of this motion, plaintiff shall provide defendant with a statement, under oath, as to whether she received treatment from Meadowlands Hospital Medical Center, Dr. Patel, Manhattan Center for Pain Control, Roosevelt Hospital, or PMSI Services. Defendant should also use plaintiff's deposition as a method of

identifying whether those entities and providers identified actually provided treatment to plaintiff relevant to this matter. Should it come to light that authorizations for relevant treaters have not been provided prior to plaintiff's deposition, defendant may be entitled to another deposition of plaintiff limited to discovery not previously disclosed.

Accordingly, it is hereby

ORDERED that, within fifteen (15) days of the date of this decision and order, plaintiff shall provide defendant with duly executed authorizations for Michael Burnett, M.D., Richard Braver, M.D., Thomas Cusimano, M.D., and Active Foot and Ankle Care; and it is further


ORDERED that within fifteen (15) days of the date of this decision and order, plaintiff shall provide defendant with a statement, under oath (either an affidavit or by deposition), as to whether she received treatment from Meadowlands Hospital Medical Center, Dr. Patel, Manhattan Center for Pain Control, Roosevelt Hospital, or PMSI Services; and it is further

ORDERED that the remainder of defendant's motion is denied; and it is further

ORDERED that the parties shall appear for a previously scheduled status conference on February 22, 2011.

Dated: January 7, 2011.

FILED
JAN 11 2011
NEW YORK
COUNTY CLERK'S OFFICE



JOAN B. LOBIS, J.S.C.