

Goldblum v Franklin Hosp. Med. Ctr.

2011 NY Slip Op 31075(U)

April 12, 2011

Supreme Court, Nassau County

Docket Number: 013549-04

Judge: Vito M. DeStefano

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,
Justice

TRIAL/IAS, PART 19
NASSAU COUNTY

**DOROTHY GOLDBLUM as Administratrix of
the Estate of ALVIN GOLDBLUM, Deceased and
Dorothy Goldblum, Individually,**

Decision and Order

Plaintiffs,

**MOTION SUBMITTED:
February 1, 2011
MOTION SEQUENCE:10
INDEX NO. 013549-04**

-against-

**FRANKLIN HOSPITAL MEDICAL CENTER,
SCOTT RATNER, M.D., SCOTT RATNER, M.D.,
P.C., EVA SAHAY, M.D., SAHAY MEDICAL
GROUP P.C., REISA ULLMAN, M.D., and ANN
MARIE RODE, M.D. a/k/a ANN MARIE RODE, D.O.,**

Defendants.

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion	1
Affirmation in Opposition	2
Plaintiff's Reply Brief	3

In this action to recover damages for medical malpractice and wrongful death, the Plaintiffs move, *inter alia*, for an order pursuant to CPLR 3126 to compel Defendant Franklin Hospital Medical Center ("Hospital") to produce outstanding discovery. The Plaintiffs' motion is granted in part and denied in part as set forth herein.

Background

The decedent, Alvin Goldblum, was admitted to the Hospital after suffering a stroke. He was treated at the Hospital from January 11, 2002 to September 12, 2002 after which he was transferred to a veteran's facility where he died the following month. The Plaintiff, Dorothy Goldblum, individually and on behalf of decedent's estate, commenced the instant action on February 25, 2003 alleging that the Defendants failed to prevent and properly treat the decedent's decubitus ulcers (bed sores).

The Plaintiff served her first discovery demand upon the Hospital on May 26, 2004 seeking written policies, protocols, rules, regulations, memoranda, correspondence, and manuals ("rules and regulations") promulgated by the Hospital (and in effect from January 2002 to September 2002) regarding the "prevention of the development of nosocomial and/or other hospital acquired infections, including but not limited to" MRSA and for the prevention and treatment of decubitus ulcers ("Plaintiffs' First Demand") (Ex. "C" to Defendant's Opposition). Another discovery demand was made on June 28, 2004 seeking all rules and regulations for nurses, doctors, neurology, cardiology, internal medicine/general medicine, infectious disease, rehabilitation, and radiology/nuclear medicine regarding the diagnosis, prevention and treatment of decubitus ulcers (Ex. "D" to Defendant's Opposition).

On August 27, 2004, Justice Burton Joseph directed that the Hospital provide to the Plaintiff the rules and regulations pertaining to the treatment of patients with strokes and the prevention of decubitus ulcers (Ex. "F" to Defendant's Opposition at p. 18-21). The Hospital responded by providing the rules and regulations in effect from January to September 2002 regarding the prevention of the development and spread of nosocomial and other hospital related infections (Ex. "E" to Defendant's Opposition).

Thereafter, compliance conferences were held resulting in various discovery stipulations (Exs "J", "K", "L", "M", "N", "O", and "T" to Defendant's Opposition). On March 10, 2009, the parties entered into a stipulation which was "so-ordered" by Justice Joseph Spinola whereby it was agreed that "Plaintiff would serve defendant [Hospital] with a demand for rules and regulations stating the specific department and the specific rule or regulation requested and the time period within which the rule or regulation was in effect by 3/24/09. Defendant to respond to this demand by April 24, 2009" (Ex. "S" to Defendant's Opposition). Apparently, the Plaintiff did not make a specific discovery demand by March 24, 2009.

On June 24, 2010, the parties entered into another stipulation whereby the Hospital agreed to respond to the Plaintiff's demand to furnish appendices to the Pressure Ulcer Prediction, Prevention and Treatment Guidelines ("Pressure Ulcer Guidelines") (which guidelines had already been produced by the Hospital), as well as the rules and regulations

regarding record keeping and documentation in effect at the time that the decedent was treated (Ex “U” to Defendant’s Opposition).

Plaintiffs thereafter served a Supplemental Notice for Discovery and Inspection (“Supplemental Demand”) dated October 26, 2010 (Ex. “X” to Defendant’s Opposition), containing a demand that the Hospital produce the following:

A. All by-laws, rules, regulations, policies, procedures, protocols, etc. that were in effect in 2002, regarding:

a. The general duties of:

- i) infectious disease physicians;
- ii) wound care specialists;
- iii) surgeons;
- iv) primary/attending physicians;
- v) nurses; and
- vi) consultant/specialist.

b. The duties with respect to prevention, assessment, diagnosis, treatment, care, management of decubitus ulcers a/k/a bed sores/pressures sores of:

- i) infectious disease physicians
- ii) wound care specialists
- iii) surgeons
- iv) primary/attending physicians
- v) nurses; and
- vi) consultant/specialist.

B. All by-laws, rules, regulations, policies, procedures, protocols, etc., that were in effect in 2002 regarding record keeping, documentation, and retention; and

C. Appendices to the Pressure Ulcer Prediction, Prevention and Treatment Guidelines (“Pressure Ulcer Guidelines”).

The Hospital objected to the Plaintiffs’ Supplemental Demand on the ground that the demand was palpably improper, amounting to nothing more than a “fishing expedition” (Ex. “Y” to Defendant’s Opposition). The Hospital’s refusal to provide the requested documents was followed by the instant motion to, *inter alia*, compel disclosure.

Discussion

The Documents Sought in Part A of the Plaintiffs' Demand

The rules and regulations sought by the Plaintiff regarding the general duties of the various departments at the Hospital have been addressed in the parties' March 2009 stipulation, which was so-ordered by Justice Spinola (Ex. "S" to Defendant's Opposition). As a matter of discretion and in the interests of justice, the court hereby extends the mandate of that order pursuant to CPLR 2004. Accordingly, the Plaintiff shall serve a demand, as per that order, within 10 days of the date hereof.¹ The Hospital shall respond within ten days thereafter. In the event that the Plaintiff fails to make a demand in accordance herewith, Plaintiff shall be deemed to have waived any right to such disclosure. In the event that the Hospital fails to timely comply with this order, upon submission of an affirmation of non-compliance by May 4, 2011, the parties shall appear in part 19, of the Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, NY, on May 23, 2011, for a hearing on the imposition of appropriate sanctions against the Hospital (CPLR 3126).

With respect to disclosure concerning the duties regarding prevention, diagnosis and treatment of decubitus ulcers as set forth in Part A, sub. b, it appears that those items were provided by the Hospital (Ex. "E" to Defendant's Opposition).

The Documents Sought in Part B of the Plaintiffs' Demand

Part B of Plaintiff's demand for disclosure concerns the Hospital's record keeping rules, regulations, protocols and policies in 2002. At a court conference on June 24, 2010, the Hospital stipulated that it would respond to a demand for, *inter alia*, rules and regulations regarding record keeping/documentation in effect at the time of Alvin Goldblum's treatment (Ex. "U" to Defendant's Opposition). The Hospital did not produce the rules and regulations with respect to its record keeping policy and now argues that the request is overly broad and burdensome.

Considering that the Hospital agreed to provide these rules and regulations, it is hereby directed to serve upon the Plaintiff the "by-laws, rules, regulations, policies, procedures, protocols, etc., that were in effect in 2002 regarding record keeping, documentation and retention", within 20 days of the date hereof. In the event that the Hospital does not comply with this direction, upon submission of an affirmation of non-compliance by May 4, 2011, the parties shall appear in Part 19, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola N.Y.

¹The court does not consider the demand contained in Part A, sub. a of the Supplemental Demand dated October 26, 2010 to be in compliance with the stipulated order.

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at 9:30 a.m., on May 23, 2011 for a hearing on the imposition of appropriate sanctions against the Hospital (CPLR 3126).

The Appendices Sought in Part C of the Plaintiffs' Demand

Item C in the Supplemental Demand seeks the appendices to the Pressure Ulcer Guidelines that were produced by the Hospital on August 23, 2004. In the stipulation entered into on June 24, 2010, the Hospital agreed to furnish the appendices to the Pressure Ulcer Guidelines. The Table of Contents in the Pressure Ulcer Guidelines refer to three appendices, namely, Appendix A (Braden Scale for Predicting Pressure Sore Risk); Appendix B (Minimum Data Set); and Appendix C (Pressure Ulcer Treatments).

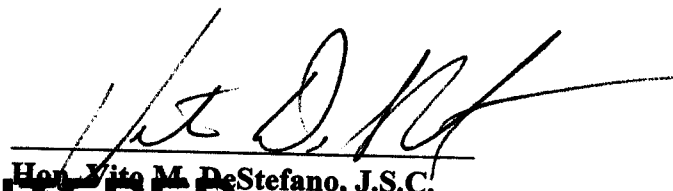
By letter dated October 19, 2010, the Hospital indicated that the appendices "are no longer in existence." Nearly two months later, however, the Hospital located Appendices A and C which it provided to the Plaintiff, without explanation as to the missing Appendix B (Ex. "Z" to Defendant's Opposition).

Accordingly, as the parties stipulated that the Hospital would provide the appendices, and it appearing that the appendices have been located, the Hospital is directed to serve upon the Plaintiff Appendix B of the Pressure Ulcer Guidelines within 20 days of the date hereof or offer a detailed explanation as to why it is unable to produce the document. In the event that the Hospital fails to timely comply with this order, upon submission of an affirmation of non-compliance by May 4, 2011, the parties shall appear in part 19 of the Nassau County Supreme Court, on May 23, 2011, at 9:30 A.M., for a hearing on the imposition of appropriate sanctions against the Hospital (CPLR 3126).

Based on the foregoing, it is hereby ordered that: Plaintiff's motion is granted only to the extent indicated herein; in all other respects, the motion is denied.

This constitutes the decision and order of the court.

Dated: April 12, 2011



ENTERED
Hon. Vito M. DeStefano, J.S.C.

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NASSAU COUNTY
COUNTY CLERK'S OFFICE