

Josan v St. Luke's-Roosevelt Hosp. Ctr.

2011 NY Slip Op 33779(U)

May 19, 2011

Supreme Court, New York County

Docket Number: 115826/09

Judge: Alice Schlesinger

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

PRESENT: S ALICE SCHLESINGER
SCHLESINGER
Justice

PART IA PART 16

JOSA, MIRIAM

INDEX NO. 115826/09

- v -
ST. LUKE'S - ROOSEVELT HOSPITAL
CENTER, ETAL.

MOTION DATE _____

MOTION SEQ. NO. 03

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 ...

PAPERS NUMBERED
FILED
MAY 24 2011

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

by defendant to compel and the cross-motion by plaintiff for a protective order are granted to the extent provided in the accompanying memorandum decision.

Dated: MAY 19 2011

Alice Schlesinger
ALICE SCHLESINGER 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
COUNTY OF NEW YORK

-----X
MIRIAM JOSAN,

Plaintiff,

-against-

Index No. 115826/09
Motion Seq. No. 003

ST. LUKE'S-ROOSEVELT HOSPITAL CENTER,
RICARDO ALEXANDER, D.D.S., P. SEIDER, D.M.D.,
and WILLIAM F. RYAN COMMUNITY HEALTH
CENTER, INC.,

Defendants.

FILED

MAY 24 2011

-----X
SCHLESINGER, J.

NEW YORK
COUNTY CLERK'S OFFICE

Defendants St.-Luke's Roosevelt Hospital Center, Ricardo Alexander, D.D.S., and P. Seider, D.M.D., have moved herein for an order pursuant to CPLR §3124 compelling plaintiff to provide further discovery. Specifically, defendants seek authorizations for the release of records relating to plaintiff's mental health, her alleged substance abuse, and various other medical conditions. The underlying medical malpractice claim is that defendants negligently treated plaintiff's fractured right mandible and failed to appropriately treat her seizure disorder during an extended period in 2009. Plaintiff has opposed the motion and cross-moved for a protective order pursuant to CPLR §3103, asserting that she already provided ample discovery and that the additional authorizations sought relate to treatment that is not relevant to the issues in this case and is confidential. Further, counsel insists that plaintiff is not a substance abuser and that no such records exist.

Following vigorous oral argument, this Court grants the motion and the cross-motion to the following extent. The Court finds that, despite plaintiff's objection, further discovery is warranted. However, discovery relating to plaintiff's mental health or alleged treatment for substance abuse shall be limited based on the following procedure:

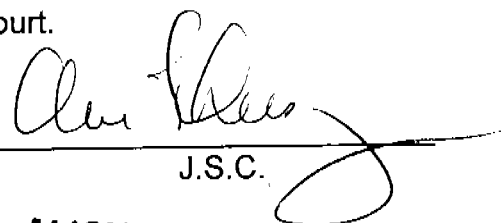
1. By June 3, 2011, plaintiff shall provide to defense counsel authorizations for records from all the providers listed in Exhibit K of defendants' motion for the period from 2004 and continuing through the end of litigation, except that with respect to any psychiatric or purported substance abuse records, the authorization shall be made returnable to plaintiff's counsel and defense counsel shall receive only a photocopy of the authorization. Authorizations provided to defense counsel need not contain addresses if the provider is not known to the plaintiff.
2. Upon his receipt of any of the above-described records, plaintiff's counsel shall notify defense counsel of the name of the provider who sent the records. Plaintiff's counsel shall then review the records and forward to defense counsel any and all records for which he does not seek a protective order and indicate how many pages he is holding for the Court's review. Records shall be forwarded as received, even if other requested records remain outstanding.
3. Defense counsel shall then send a letter to the Court, with a copy to plaintiff's counsel, specifying the issues potentially raised in the medical records that defense counsel asserts are discoverable and a brief statement as to their relevance. Such issues may include plaintiff's use of certain medications, her alleged non-compliance with physician orders, her seizure disorder, and dental treatment received.
4. Plaintiff will then forward the disputed records to the Court for an *in camera* inspection, along with a letter detailing proposed redactions and why they are appropriate, responding as well to the letter from defense counsel. The Court will render a written determination.

5. Should defense counsel herself receive from any provider records relating to plaintiff's alleged psychiatric treatment or substance abuse, she shall promptly forward them to plaintiff's counsel without reading or photocopying them so the above procedure can be followed.
6. Defendants' time to move for summary judgment is tolled pending a further order of this Court.
7. Counsel shall appear for a pre-trial conference on Wednesday, August 3, 2011 at 11:30 a.m. ready to select a trial date.

This constitutes the decision and order of this Court.

Dated: May 19, 2011

MAY 19 2011



J.S.C.

ALICE SCHLESINGER

FILED

MAY 24 2011

**NEW YORK
COUNTY CLERK'S OFFICE**