

**Palmer v New York Presbyt.-Columbia Univ. Hosp.**

2013 NY Slip Op 31632(U)

July 18, 2013

Sup Ct, New York County

Docket Number: 400609/11

Judge: Joan B. Lobis

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

PRESENT: LOBIS  
Justice

PART 6

Index Number : 400609/2011  
PALMER, LATIA  
vs.  
NEW YORK PRESBYTERIAN-COLUMBIA  
SEQUENCE NUMBER : 003  
ORDER OF PROTECTION

INDEX NO. \_\_\_\_\_  
MOTION DATE 5/22/13  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 22, were read on this motion to for a protective order.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) 1-7  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s) 8-15  
Replying Affidavits \_\_\_\_\_ No(s) 16-22

Upon the foregoing papers, it is ordered that this motion is

# FILED

JUL 23 2013

NEW YORK  
COUNTY CLERK'S OFFICE

**THIS MOTION IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM DECISION &  
ORDER.**

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

Dated: 7/18/13

JOAN B. LOBIS, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

-----X  
LATIA PALMER,

Plaintiff,

Index No. 400609/11

-against-

**Decision and Order**

NEW YORK PRESBYTERIAN-COLUMBIA  
UNIVERSITY HOSPITAL, DR. ANNETTE  
PEREZ-DELBOY, M.D., DR. STEFANIE  
WETHINGTON, M.D., CYNTHIA GYAMFI, M.D.,

**FILED**

JUL 23 2013

Defendants.

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

NEW YORK  
COUNTY CLERK'S OFFICE

Pro se plaintiff Latia Palmer moves for various items of relief in this medical malpractice action, which is still in the discovery stage. From a liberal reading of her motion, it appears that she is seeking a protective order pursuant to regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a protective order pursuant to Sections 3101 and 3103 of the Civil Practice Law and Rules, sanctions pursuant to Section 3126 of the Civil Practice Law and Rules, and summary judgment pursuant to 3213 of the Civil Practice Law and Rules. She asserts that she is entitled to a jury trial pursuant to the Seventh Amendment of the U.S. Constitution. She also alleges violations of the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution. In addition to protective orders, she asks this Court to grant her summary judgment for punitive damages. The New York Presbyterian-Columbia University, Dr. Perez-Delboy, Dr. Wethington, and Dr. Gyamfi, by their attorney, the Law Firm of Martin, Clearwater & Bell, LLP, oppose this motion as without merit and seek sanctions and costs. The plaintiff has also submitted a reply and opposition to a cross-motion, the bulk of which opposed

the defendants' separate order to show cause that had already been granted. The defendants sought leave to submit opposition papers excluded by the submissions part clerk on the day that the motion was returnable. To the extent the reply asserts grounds for relief not previously raised, the relief is denied as not properly before the Court.

The plaintiff's cause of action arises out of the obstetrical care and treatment of Ms. Palmer in the fall of 2008 by defendants. Her pregnancy ended with a stillbirth of a baby girl on November 9, 2008. In her complaint she alleges that the infant died because of the defendants' negligent management of her pregnancy.

A preliminary conference was held in this case on May 1, 2012. There have been approximately nine appearances since then, at which time various issues of discovery were addressed: on-going disputes involving production of medical records, insurance documents, hospital policies and authorizations for release of medical records, to name the most contentious of the discovery problems. Not only were the propriety of the substance of the disclosure fought over, but also there were repeated problems about the receipt of documents. Numerous rulings were made on the record and reduced to written orders.

It is understandable that Ms. Palmer is concerned about her privacy and the misuse of any of her medical information that the defendants receive about her. She is asking for the protections mandated by HIPAA. But she has made her medical condition an issue by suing for medical malpractice, and with that, she is required to produce medical records. Under these

circumstances, the right of the defendants to get medical information is fairly broad. Defendants' inclusion of information about another patient in the records that they produced on one occasion is a concern. But that improvident disclosure does not provide the Court with a basis to issue the broad prophylactic order that plaintiff requests. She seeks injunctive relief for which she has made no showing. The attorneys are under a duty to follow the restrictions that HIPAA imposes, and the Court will not issue orders as if wide-spread violations have occurred.

It is clear from reviewing these rulings that both sides have requested discovery that was over-broad or improper and that both sides have been slow to comply with the production of necessary items. Although Ms. Palmer alleges that she had been prejudiced by the defendants' conduct, no prejudice has been shown. Protective orders and sanctions under the Civil Practice Law and Rules are granted when a showing is made that the conduct complained of goes beyond the legitimate needs of the litigation, both the letter and the spirit of discovery, or, in the case of sanctions, the conduct is wilful, contumacious, or in bad faith. Gibbs v. St. Barnabas Hosp., 61 A.D.3d 599 (1st Dep't 2009). No such showing has been made.

Plaintiff's request for summary judgment is without merit. She cites Section 3213 of the Civil Practice Law and Rules, Motion for Summary Judgment in Lieu of Complaint, which has no application here. Not only is her action not based on an instrument for the payment of money only nor based on a court judgment, but also she has served a complaint. It cannot be considered as a motion for summary judgment under Section 3212 because she has offered no evidence in admissible, non-conclusory form that establishes medical malpractice has occurred.

Her allegations of violations of the Seventh and Fourteenth Amendments do not state conduct that runs afoul of the U.S. Constitution. Her right to a jury trial is governed by Section 4102 of the Civil Practice Law and Rules and can be exercised by timely filing a jury demand at the time the note of issue is filed and paying the required fee. Both the due process and equal protection clauses of the Fourteenth Amendment are restraints on the conduct of state actors, parties acting with some government function or duty, not private citizens acting in an individual capacity. Plaintiff has not established a violation of her constitutional rights by defendants. All other requests not specifically addressed are found to be without merit or procedurally improper. Accordingly, it is

ORDERED that the motion is denied.

Dated: *July 18, 2013*

ENTER:

*JBL*  
\_\_\_\_\_  
JOAN B. LOBIS, J.S.C.

**FILED**  
JUL 23 2013  
NEW YORK  
COUNTY CLERK'S OFFICE