

Ballesteros v Pou

2013 NY Slip Op 33703(U)

March 14, 2013

Sup Ct, NY County

Docket Number: 800133/10

Judge: Alice Schlesinger

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: ALICE SCHLESINGER
SCHLESINGER
Justice

~~PART~~ IA PART 16

BALLESTEROS, FRANCISCO,
ET AL.

INDEX NO. 800133/10

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

- v -
RICARDO POO, M.D.,
ET AL.

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

to compel is granted in accordance with the accompanying memorandum decision.

FILED

MAR 19 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: MAR 14 2013

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
FRANCISCO BALLESTEROS and
VILESOL BALLESTEROS,

Plaintiffs,

-against-

Index No. 800133/10
Motion Seq. No. 002

RICARDO POU, M.D., MUHAMMAD HAQUE, SR., M.D.,
MUHAMMAD HAQUE, JR., M.D., SANDRA NIEVES
ROSADO, M.D., and 139 MEDICAL GROUP,

Defendants.
-----X

SCHLESINGER, J.

FILED

MAR 19 2013

NEW YORK

COUNTY CLERK'S OFFICE

Unfortunately for all involved, little progress has been made in this medical malpractice action because the parties have been unable to obtain a certified copy of the plaintiff's medical records. It appears that the individual defendant doctors were providing care and treatment to the plaintiff under the auspices of 139 Medical Group, and the Group maintained all the medical records. However, the difficulty in obtaining records has been made all the more acute by various actions taken by some of the parties and their counsel in this case.

Specifically, it appears that Howard Bushin, Esq., counsel for 139 Medical Group, was anxious to have the case discontinued against his client and proceed with his planned retirement from the practice of law. To that end, Mr. Bushin gave to plaintiff's counsel Peter Rosenberg an affidavit from defendant Muhammad M. Haque, Sr., M.D., sworn to on December 19, 2012. A copy is attached to Mr. Rosenberg's Affidavit in connection with Mr. Bushin's Order to Show Cause to be relieved as counsel for 139 Medical Group. In his Affidavit, Dr. Haque states that he is "the owner and sole stockholder of 139 Medical Group." He then explains that "139 Medical Group is a shell corporation and is not involved with the care and treatment of patients nor the hiring,

firing, supervising and the training of the physicians practicing at the facility.” Lastly, he notes that the Group is “not covered by any malpractice insurance.”

Upon receipt of that Affidavit, Mr. Rosenberg on behalf of the plaintiffs and Mr. Bushin on behalf of 139 Medical Group stipulated in December 2012 to discontinue the action against 139 Medical Group. A copy of that Stipulation is attached to Mr. Rosenberg’s papers and was filed with the County Clerk on January 8, 2012. However, this Court finds that the Stipulation is of no force and effect as it was neither signed by counsel for all the parties nor “So Ordered” by this Court.¹

Thereafter, Mr. Bushin moved by Order to Show Cause to be relieved as counsel for 139 Medical Group. Additionally, frustrated by their inability to obtain the records, counsel for Dr. Haque, Jr. Moved to compel 139 Medical Group to produce a complete, certified copy of the records. Other counsel joined in that request, and various counsel opposed the proposed withdrawal of Mr. Bushin before the records were produced. Both matters were heard on February 13, 2013, with Mr. Bushin appearing by telephone. The Court orally directed Mr. Bushin to have his client conduct a thorough search and produce a complete, certified copy of the records. The matter was adjourned to March 13 for compliance.

¹ In contrast, by Stipulation between counsel for the plaintiffs, counsel for 139 Medical Group, and counsel for Muhammad Haque, Sr., M.D., dated June 14, 2011, the action was effectively discontinued against defendant Muhammad Haque, Sr., M.D. “without prejudice to any Article 16 rights of any co-defendant” because the Stipulation was “So Ordered” by this Court on January 5, 2012. In the opinion of this Court, the stated reservation of rights would undoubtedly entitle the co-defendants to a deposition of Dr. Haque, Sr., or other appropriate discovery from him, if requested.

Perhaps because counsel for 139 Medical Group viewed the action as discontinued against the Group — albeit incorrectly — his response to this Court's February 13 oral directive to produce a certified copy of the medical records was anemic, at best. Only a partial copy of the records was produced. The term "partial copy" is used very loosely here because it seems clear based on the recollection of the plaintiff as well as corroborative Medicaid records that plaintiff's care at the offices of 139 Medical Group went back as far as 2003, yet the only records produced to date begin in 2008.

Then, by letter from Mr. Bushin to counsel for Dr. Haque, Jr. dated February 29, 2013, Mr. Bushin indicated dates when Dr. Haque, Sr. would be available at the offices of 139 Medical Group to certify the records that had been obtained as of that date. He contended that the arrangement constituted "compliance" with this Court's oral directive and he insisted that no further search would be conducted without a court order. By letter dated March 4 from counsel for Dr. Haque, Jr. to Mr. Bushin, counsel asserted that the incomplete set of records produced remained inadequate and did not constitute compliance with the Court's directive. In that same letter, counsel reminded Mr. Bushin that the matter was next scheduled to be heard on March 13.

Counsel for the plaintiff and the various defendants appeared on March 13. Mr. Bushin did not appear or telephone the Court, even though he had been advised repeatedly of the appearance and even though his Order to Show Cause to be relieved as counsel had been adjourned to that date. During that appearance, the various counsel present reiterated that they still did not have a complete copy of the medical records and that they could not proceed with depositions until those records had been

Accordingly, it is hereby

ORDERED that the motion by defendant Muhammad Haque, Jr., M.D., joined in by others, to compel 139 Medical Group to produce a complete, certified copy of plaintiff's records is granted as provided herein.

Dated: March 14, 2013

MAR 14 2013



ALICE SCHLESINGER

J.S.C.

FILED

MAR 19 2013

NEW YORK
COUNTY CLERKS OFFICE