

Donato v Nutovits

2015 NY Slip Op 32737(U)

February 23, 2015

Supreme Court, Westchester County

Docket Number: 70468/2012

Judge: Joan B. Lefkowitz

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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
KENNETH DONATO, SR., Individually and as
Administrator of the Estate of SOPHIE M. DONATO
a/k/a SOPHIE DONATO, deceased,

Plaintiffs,

-against-

RONALD NUTOVITS, M.D., EMERGENCY
MEDICAL ASSOCIATION OF NEW YORK, P.C.
a/k/a EMERGENCY MEDICAL ASSOCIATES,
MATTHEW GOLKAR, M.D., DAVID L. BURNS,
M.D., THE WESTCHESTER MEDICAL PRACTICE,
P.C., and HUDSON VALLEY HOSPITAL CENTER,

Defendants.

-----X
LEFKOWITZ, J.

DECISION & ORDER

Index No. 70468/2012
Motion Date: Feb. 23, 2015
Motion Seq. No.: 1

The following papers were read on this motion by plaintiffs for an order pursuant to CPLR 3124 compelling defendant Hudson Valley Hospital Center (“HVHC”) to provide responses to plaintiffs’ discovery demands/notices and compelling defendants David L. Burns, M.D. (“Dr. Burns”) and Matthew Golkar, M.D. (“Dr. Golkar”) to appear for a further deposition to answer questions that were marked for a ruling during their respective depositions. Dr. Burns, Dr. Golkar, and HVHC have submitted opposition to the motion.

Order to Show Cause-Affirmation-Exhibits A-F
Affirmation in Opposition by Dr. Burns and Dr. Golkar -Exhibits A-C
Affirmation in Opposition by HVHC -Exhibits A-D^{1,2}

¹ The briefing schedule directed for opposition papers to be filed to NYSCEF by noon on January 29, 2015. It is noted that HVHC’s opposition papers were not filed until January 30, 2015 at 4:14 p.m., however the court in its discretion has considered those papers in order to determine the motion on its merits.

² Plaintiffs’ reply affirmations dated January 29, 2015 and February 4, 2015 were not considered as they were submitted in contravention of the DCM Protocols, the Briefing Schedule dated December 23, 2014 and the Order to Show Cause.

Upon the foregoing papers and the proceedings held on February 23, 2015, the motion is decided as follows:

In this malpractice and wrongful death action, plaintiffs allege that Sophie M. Donato a/k/a Sophie Donato (the “decedent”) went to HVHC’s emergency department (the “ED”) at approximately 6:00 a.m. on December 29, 2010, complaining of abdominal pain. While in the ED she was examined by defendant Ronald Nutovits, M.D. (“Dr. Nutovits”). The decedent was provided IV hydration and pain medications and was scheduled to be discharged and to follow up with Dr. Burns, decedent’s primary care physician and gastroenterologist, the next day. However, prior to discharge, she developed nausea and vomited coffee ground emesis and had bright red blood per rectum. She was then admitted to the hospital’s Progressive Care Unit (“PCU”) by Dr. Golkar, at approximately 5:00 p.m., but as there were no beds available in the PCU at that time, she remained in the ED on an “ER Hold.” Dr. Golkar’s shift ended at 7:00 p.m.

It is plaintiffs’ contention that the ER Hold consisted of a small room away from the nurses station with no monitoring equipment. Plaintiffs state that the decedent remained in the ER Hold room until, according to HVHC Emergency Department records, she was found at 8:45 a.m. on December 30, 2010, with “agonal respirations and pulse less” and was subsequently assessed with “Septic shock status post cardiac arrest; aspiration pneumonia; respiratory failure; acute renal failure; bowel obstruction versus ischemic colitis versus perforation, evidence of GI bleeding.” Decedent was resuscitated and intubated. During the course of the next several hours, she suffered two more cardiac arrests and died at 3:10 p.m. on December 30, 2010. It is among plaintiffs’ contentions that the decedent’s death was attributed to inadequate monitoring and observation as a result of being located in the ER Hold room as opposed to the PCU or ICU.

Plaintiffs bring this motion seeking to compel the further deposition of Dr. Burns and Dr. Golkar concerning questions which counsel objected to and directed the witnesses not to answer. Plaintiffs also seek to compel the production of certain documents from HVHC.

**Responses to Plaintiffs’ Notices for Discovery and Inspection:
Bylaws/ Protocols/Policies/Guidelines**

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of 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” (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L’Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The trial court

has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

Plaintiffs contend that HVHC has failed to adequately respond to plaintiffs' Notice for Discovery and Inspection dated June 10, 2014 (the "June 10, 2014 demands"). Specifically plaintiffs contend that HVHC improperly objected to the following demands:

7. Any and all rules, manuals, protocols or the like, pertaining to treatment of patients with obstruction/ischemic colitis/perforation, in effect in December 2010.
8. Any and all rules, manuals, protocols or the like, pertaining to requests for surgical consultation, in effect in December 2010.
9. Any and all rules, manuals, protocols or the like, pertaining to the availability of specialists for consultation and requests for consultation by specialists, in effect in December 2010.
10. Any and all rules, manuals, protocols or the like, pertaining to placement/insertion of nasogastric (NG) tubes, in effect in December 2010.
11. Any and all rules, manuals, protocols or the like, pertaining to admission of patients from the Emergency Department, in effect in December 2010.
12. Any and all rules, manuals, protocols or the like, pertaining to the frequency which with patients are to be monitored for conditions such as those of plaintiffs' decedent, in effect in December 2010.

On or about September 29, 2014, HVHC served its response to plaintiffs' June 10, 2014 demands. With respect to demands number 7-11, HVHC interposed the general objection that the demands were vague, overbroad, and unduly burdensome, and stated that notwithstanding those objections, the items demanded did not exist in December 2010. With respect to demand number 12, HVHC objected to that demand on the grounds that it was vague, overbroad and unduly burdensome.

Plaintiffs responded by letter dated October 6, 2014, requesting that HVHC supplement its response "by providing rules, manuals, protocols or the like pertaining to the patients with the following conditions: admitted to a floor, but who remain in the emergency department/on the emergency department floor; abdominal pain; distended abdomen; hyperactive/hypoactive bowel sounds; bowel/colon obstruction or stricture; diarrhea; nausea; vomiting; coffee ground emesis; blood per rectum; gastrointestinal bleeding; aspiration risk; distended abdomen; blood in stool; and septicemia/severe sepsis."

On or about November 11, 2014, plaintiffs served a Notice for Discovery and Inspection (the "November 11, 2014 demands") which sought, among other things, HVHC's policy or guideline which addresses the specific situation when a patient has been accepted for admission,

or is under the care of a person who has attending privileges at Hudson Valley Hospital Center and the person resides in the emergency room/ department, that the transfer of care goes over to that person who has attending privileges. In a letter to HVHC's counsel dated December 4, 2014, plaintiffs requested additional information including, "... the Bylaws, Rules and ACLS Protocols concerning what must be done and what forms and/or documentation must be completed during and/or after a code."

Plaintiffs stated that the only document which has been provided with respect to the foregoing is the 2010 Emergency Department Manual Index.

In response HVHC states, as it did in its September 29, 2014 response, that a search for the various rules, manuals, protocols and the like pertaining to medical conditions and specific treatment protocols was conducted by HVHC and it was determined that none exist. HVHC states that it did produce the table of contents for HVHC's Emergency Department Manual on December 18, 2014 and that HVHC will provide the majority of the desired protocols which plaintiffs have selected from the table of contents. HVHC does object to producing the rules regarding acetaminophen administration in triage on the grounds that there is no evidence in the chart that acetaminophen was administered to the decedent. HVHC also objects to producing the protocol for ED charges; Selection Criteria, Emergency Department Physicians; Emergency Communications; Procedures by Non-Physicians in the ED; Supplies; and Volunteer Placement in the ED on the grounds that these protocols are irrelevant to the issues of this case. Annexed as an exhibit to its opposition papers, HVHC includes its response to the demand for the protocol relative to ED physician responsibility for patients admitted as in-patients but held in the ED.

To the extent that HVHC has in its possession the documents sought, it has already provided or will provide as asserted in its opposition papers most of the items sought by plaintiffs, there appear to be only a few outstanding items on this list. The court agrees that demand number 12 of the June 10, 2014 demands is unclear. Additionally, plaintiffs' demand for the rules regarding acetaminophen administration in the ED, the protocol for ED charges, selection criteria, emergency department physicians, emergency communication, supplies and volunteer placement do not appear to be relevant to the allegations against defendants. However, the section of the ED manual Procedures by Non-Physicians in the ED does appear relevant to plaintiffs' inquiry and should be produced.

Daily Census for December 29, 2010 and December 30, 2010

In plaintiffs' Notice for Discovery & Inspection dated July 24, 2014 (the "July 24, 2014 demands") a demand was made for the daily census (the number of beds occupied and the total number of beds) for December 29 and 30, 2010 for HVHC's ED, PCU and ICU. Plaintiffs enlarged this demand in the November 11, 2014 demands, to include census reports run from the

EDIM system.³ In response to the remaining census reports for the PCU or the ICU, HVHC responded that those reports are not generated or maintained in the ordinary course of business. Plaintiffs state that HVHC's assertion is contradicted by testimony given by Dr. Burns during his deposition. Plaintiffs argue that since the decedent remained in the Emergency Department even after being admitted to the hospital, because no beds were available in the PCU, they are entitled to the census(es).

With respect to the demand for census information, HVHC contends that it produced the ED daily census for December 29, 2010 in its September 29, 2014 response. HVHC states that it conducted an investigation and determined that a daily census for the PCU or ICU does not exist. HVHC argues that although Dr. Burns testified he could get census information about the availability of beds by calling the nursing supervisor, this does not translate into evidence of the existence of census documents.

Inspection and Floor Plan

In the December 4, 2014 letter plaintiffs also requested the production of "...a copy of the floor plan of the emergency department, concerning the layout of rooms, number of beds, location of nurses' station, etc., *as it existed on December 29-30, 2010* (emphasis in original). Please also advise when the emergency department, specifically the locations where plaintiffs' decedent was held, can be photographed (i.e., when a site inspection can take place." By letter dated December 19, 2014, HVHC, among other things, objected to the site inspection of its Emergency Department on the grounds that "...it is likely to disrupt patient care and the conduct of business there, is overly burdensome, intrusive, inconvenient, and irrelevant. " and to the production of the Emergency Department floor plan as "overly burdensome, intrusive, inconvenient, and irrelevant."

Plaintiffs argue that this information is relevant as they have alleged that defendants failed to adequately monitor the decedent and her location in relation to nurses and doctors areas is relevant to those allegations. In response, HVHC states that it will provide a copy of the floor plan as well as an affidavit by Thomas Lepore, HVHC's Director of Plant and Engineering who is familiar with the construction projects undertaken at HVHC over the years and states that the ED Room 12, where the decedent was placed exists in the same layout today as it did on December 29, 2010.

HVHC renews its objections to any on-site inspection as intrusive and unduly burdensome. HVHC argues that its emergency department is a busy emergency room with many patients passing through each day and an on site inspection would adversely affect the privacy rights of these patients while they are receiving treatment and is prohibited under the CPLR

³ Plaintiffs contend that HVHC did provide the census information for the Emergency Department, but state that it is unclear whether that information is from the EDIM system and if not, then the census information from the EDIM system is still owed.

4504(a). HVHC contends that contrary to plaintiffs' assertions otherwise, it is clear from the testimony provided by Dr. Burns and Dr. Golkar and the decedent's chart that she was placed on a heart monitor and pulse oxymeter while in ED Room 12.

While this court is cognizant of the privacy issues at stake and the protections afforded by CPLR 4504 and HIPAA, an on-site inspection of the ED, and specifically ED Room 12 could lead to evidence that is necessary to the prosecution of this action (see, *Suchorzepka v Mukhtarzad*, 103 AD3d 878 [2nd Dept 2013]). Any inspection of the ED "should be limited to ascertaining the physical layout of the premises....and should be conducted in a manner so as to avoid disruption of the treatment being received by patients...and to prevent the disclosure of confidential and privileged information..." (*Suchorzepka*, at 880).

Additional Discovery Demands

During the course of his deposition, Dr. Burns testified that he had provided sworn testimony in 10 cases. In a letter dated December 17, 2014, plaintiffs demanded the names of those cases (captions), index numbers, venue and a copy of each transcript concerning his testimony. Additionally, plaintiffs demanded: the schedule of patients for Dr. Burns in the hospital on the day of treatment at the emergency room on December 29-30, 2010 (with last names of patients to be redacted); and Dr. Burns' schedule of patients in the office on December 29-30, 2010 (with last names of patients to be redacted). Plaintiffs contend that none of this information has been provided.

In response, defense counsel firstly argues that the demand for the case names, index numbers and venue of cases constitutes an interrogatory impermissibly served in a case where plaintiff has taken Dr. Burns' deposition in violation of CPLR 3130 and that demand should be stricken and that part of the motion denied. In any event, Dr. Burns has advised that he does not have any of the requested information. During his deposition, Dr. Burns testified that he recalled the names of several of the cases and provided those to plaintiffs' counsel. Defense counsel state that no transcripts of Dr. Burns' testimony have been located and Dr. Burns has advised that he does not have such transcripts. Additionally, defendants object to the production of a redacted list of Dr. Burns' office calendar as well as a listing of his hospital patients on the dates the decedent was in the hospital on the grounds that such information is irrelevant, immaterial and the production of same would violate HIPAA and CPLR 4504(a).

Objections to Questions at Deposition

A deponent is required to answer all questions except to preserve a privilege or right of confidentiality, or when the question is plainly improper and would, if answered, cause significant prejudice to any person (Uniform Rules for Trial Courts [22 NYCRR] § 221.2). In *Carvalho*, the Court held that in a medical malpractice action against more than one physician, "one defendant physician may not be examined before trial about the professional quality of services rendered by a codefendant physician if the question bears solely on the alleged negligence of the codefendant and not on the practice of the witness" (*Id.* at 635; see *Claudino v*

Mastellone, 286 AD2d 697 [2d Dept 2001]; *Harley v Catholic Med. Ctr. of Brooklyn*, 57 AD2d 827 [2d Dept 1977]). Accordingly, the Court in *Carvalho* further held that where “the opinion sought refers to the treatment rendered by the witness, the fact that it may also refer to the services of a codefendant does not excuse the defendant witness from deposing as an expert” (*Carvalho*, 53 AD2d at 635; see *Harley v Catholic Med. Ctr. of Brooklyn*, 57 AD2d 827).

Dr. Burns

Plaintiffs contend that counsel for Dr. Burns improperly objected to and directed him not to answer a number of questions on the grounds that the questioning violated the holding of *Carvalho v New Rochelle Hospital*, 53 AD2d 635 (2d Dept 1976). Plaintiffs state that since the questions do not bear solely on the alleged negligence of a co-defendant and not on the practice of the witness, an objection under *Carvalho* was improper.

Q. Okay. If I told you that vitals were not taken for a nine -- approximately a nine-hour period of time prior to the second conversation with you at or about 3:25 p.m., would that be surprising to you?

MR. BURFORD: Objection. You're asking him to comment on care rendered by other people. here's a *Carvalho* objection. (Burns' Tr.p. 158-60)

Q. Okay. What is your general understanding as to when vitals are supposed to be taken for a patient who's in the emergency room?

MR. BURFORD: That's objectionable as well.

Q. Please answer the question.

MR. BURFORD: You have a *Carvalho* problem there also. (Burns Tr., p. 161)

Q. What is the significance of any focal narrowing at the junction of the distal descending colon and the sigmoid, if any?

MR. BURFORD: That's *Carvalho*. (Burns Tr., p.172)

Q. Do you have an understanding that there was a narrowing of the lumen of the colon with respect to this patient?

MR. BURFORD: Now or then?

MR. PIRROTTI: Then, at that time.

A. No.

Q. Okay. Did you have an understanding that there were dilated loops that were proximal at that time?

A. No.

Q. And you already said that you did not know that there -- or you weren't told that there was fluid in the left paracolic gutter; correct?

A. Correct.

Q. If those -- three of those things are together, do they present a unique presentation?

MR. BURFORD: That's Carvalho. (Burns Tr., p.183)

Q. Did you have an understanding of whether or not she had bright red blood from the rectum? Were you ever told that concerning this admission, this ER visit, and this admission?

A. No.

Q. What would that indicate to you, if you were told that?

A. On my first thought is hemorrhoids.

Q. Second thought?

A. Second thought would be proctitis.

Q. Concerning this patient in this presentation?

MR. BURFORD: Now you've got a Carvalho problem (Burns Tr., p.191)

A. I am saying that an obstruction in the digestive tract is treated differently depending on where the obstruction is located.

Q. So anywhere in the large bowel, would you treat that any differently? Does it matter to you?

A. Does it -- yeah, it does matter to me. Yes, it would matter.

Q. So if the obstruction is in the descending colon or coming at the area of the sigmoid colon, how do you treat an obstruction like that?

MR. BURFORD: That's Carvalho. You've got a Carvalho problem there, too. (Burns Tr., p.192)

Q. Okay. And do -- as part of your practice, do you treat patients in hospitals who have obstructions?

A. Yes, I have treated patients with obstructions in hospitals.

Q. Assume the hypothetical here that the patient had an obstruction. Would that be something that you are capable of treating?

MR. BURFORD: Objection to the form.

Q. Please answer.

MR. BURFORD: Read that question back to me, please.

(Question read)

A. Are we referring to this patient --

Q. Yes, this patient.

A. -- or are we referring to just in general?

Q. This patient.

MR. BURFORD: Then you have a Carvalho problem. (Burns Tr., p.193-4)

Q. So would you agree, though, that if, in fact, someone was looking at this patient there, giving one-on-one care, that, that would be important information for you?

MR. BURFORD: Objection. That's Carvalho and it's been asked and answered. (Burns Tr., p. 228-9)

Q. So Doctor, would you agree with me that had this patient been put into the ICU

or PCU, that she would have had someone looking over her one on one?
MR. BURFORD: That's Carvalho. (Burns. Tr., p. 229)

Defense counsel argues that these questions are prohibited by *Carvalho* as Dr. Burns was not involved in decedent's care on the dates in question. Counsel for Dr. Burns argues that he was contacted by Dr. Nutovits when the decedent was still in the ED and at that time it was anticipated that she would be discharged and that she would be instructed to follow up with Dr. Burns the following day. Defense counsel states that the next time Dr. Burns heard anything about the decedent's condition is when he was contacted a second time by Dr. Nutovits advising that the decedent was being admitted. Defendant argues that the questions objected to concerned care provided to the decedent by physicians other than himself.

The questions at issue asked Dr. Burns his opinion with respect to treatment which was provided to the decedent on December 29 -30, 2010, when Dr. Burns was not at the hospital. Insofar as Dr. Burns did not provide care or treatment to the decedent on December 29-30, 2010, the questions did not refer to Dr. Burns' treatment of the decedent and sought to elicit expert opinion solely as the treatment rendered by other physicians to the decedent. Accordingly, those questions were palpably improper and properly objected to.

During the deposition Dr. Burns stated that he was unable to state definitively what caused the decedent's death, and stated that the only person who could know what happened "...would be Jesus Christ, God. God's the only person who knows what really happened." (Burns Tr.,p 221). Plaintiffs' counsel, referring to other cases in which Dr. Burns had stated that he had provided testimony, asked him that when he gave sworn testimony in those cases, was he acting as Jesus Christ at which point Dr. Burns' counsel objected and directed him not to answer . (Burns Tr., p. 227). Insofar as this question was plainly improper, counsel properly directed the witness not to answer.

Dr. Golkar

Plaintiffs contend that counsel for Dr. Burns improperly objected to and directed him not to answer a number of questions on the grounds that the questioning violated the holding of *Carvalho*. Plaintiffs state that since the questions do not bear solely on the alleged negligence of a co-defendant and not on the practice of the witness, an objection under *Carvalho* was improper.

Q. How about custom and practice: Do you know what the custom and practice was back in 2010, when narcotics are given, as to whether vitals are supposed to be taken?

MS. DINGES: Objection.

MR. SIKOSCOW: Objection.

MR. BURFORD: That's Carvalho. Objection. (Golkar Tr., p.110)

Q. Well, is it important to you at all, as to the events which precipitated the code?

A. The fact that there was vomitus on her, that would be something important.

Q. It would be something important to you as a physician; because if she had

vomited on her and she was having a code, that she could possibly aspirate; right?

A. It would probably indicate she did aspirate.

Q. Ah. That's important, is it not?

A. Sure.

Q. It's not only important to you, but it's important for others to know; correct?

MR. BURFORD: Objection. Objection. That's Carvalho. (Golkar Tr., p. 180)

Q. Isn't there -- the Kayexalate, isn't the Kayexalate used to bring down the potassium?

A. Yes; but it takes several hours to work, which is why you give the other medicine first.

Q. "The other medicine" being the five units of insulin with the dextrose?

A. Correct.

Q. Do you know of any other way to bring down potassium other than those ways - with Kayexalate or with the insulin combined with dextrose?

MR. BURFORD: Objection. You've got a Carvalho problem there. He wasn't treating this. He wasn't in the hospital at this time. (Golkar Tr., p. 244)

To the extent that the first question concerns care provided by others to the decedent prior to the time that Dr. Golkar admitted the decedent to the hospital and was involved in her treatment, defense counsel properly invoked *Carvalho*. Additionally, even though the remaining questions relate to the period after the decedent was admitted to the hospital they reference care provided by others and during a time period when Dr. Golkar was not present at the hospital or not treating the decedent.

Q. So, now, with regards to the findings of the CT scan: "CT of the abdomen and pelvis revealed interval dilation of the small bowel loops in the entire colon." Is that what you feel is a representative sentence concerning the findings of the CT scan?

A. I believe the word "in" is a -- is transcribed incorrectly. It should be, "and," "...and in the entire colon."

Q. Other than that, what would be your answer, please? And if you'd like the question read back, we can read it back.

MR. BURFORD: Yes, why don't you read that question back.

(Question read)

MR. BURFORD: When you say, "representative sentence," what do you mean?

MR. PIRROTTI: Just what it says.

MR. BURFORD: All right. Then, I object to the form of your question.

Q. Please answer it.

MR. BURFORD: Not in that form. (Golkar Tr., p.117-8)

Improper objection as to form.

Here, counsel for Dr. Golkar improperly directed him not to answer under the rules.

Additionally, Dr. Golkar's counsel improperly advised him not to answer two questions concerning how much time he spent with his attorney preparing for the deposition based upon attorney-client privilege. Despite counsel's argument that this relates to matters which are protected as attorney-client communications, the privilege attaches to the communication, not to whether it occurred. To the extent that disclosure of the length of time involved in the communication does not disclose the content of what was discussed, that information is not privileged.

Plaintiffs are entitled to production of: the protocols contained in HVHC's ED Manual as previously requested by plaintiffs except the following sections: the protocols for ED charges, Selection Criteria, Emergency Department Physicians, Entergy Communications, Supplies, and Volunteer Placement in the ED; and a copy of the floor plan with the aforementioned affidavit by Thomas Lepore.

Plaintiffs are also entitled to an onsite inspection of the ED and Room 12 in keeping with the restrictions stated herein. Plaintiffs are entitled to a further examination of Dr. Golkar on the length of time he met with counsel to prepare for his deposition and the above question (Golkar Trs., p. 117 line 19-20), on the condition that plaintiffs' counsel rephrases the question.

In view of the foregoing, it is

ORDERED that the branch of the motion seeking to compel discovery is granted as follows: to the extent not already provided, HVHC is to produce, within 30 days of today's date, the previously identified protocols in HVHC's Emergency Department Manual, except for the protocols/sections concerning ED charges, Selection Criteria, Emergency Department Physicians, Entergy Communications, Supplies, and Volunteer Placement in the ED; a copy of the floor plan with the aforementioned affidavit by Thomas Lepore. Plaintiffs are also entitled to an onsite inspection of HVHC's Emergency Department which shall be limited to ascertaining the physical layout of the premises and conducted in a manner avoiding disruption of the treatment being received by patients and preventing the disclosure of confidential and privileged information; and it is further

ORDERED that the branch of the motion seeking the further deposition of Dr. Burns and Dr. Golkar is granted only to the extent that Dr. Golkar is directed to appear, within 30 days of today's date, for a further deposition limited to the length of time he met with counsel to prepare for his deposition and the question which appears on p. 117 lines 19-20 of his deposition transcript, provided plaintiffs' counsel rephrases the question and the question is in proper form; and it is further

ORDERED that plaintiffs shall serve a copy of this decision and order with notice of entry upon counsel for all parties within 7 days of entry; and it is further

ORDERED that the parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on March 31, 2015 at 9:30 a.m.

Dated: White Plains, New York
February 23, 2015


HON. JOAN B. LEFKOWITZ, J.S.C.