

**Fuhrmann v Aesthetic Dentistry by DiPilla, P.C.**

2016 NY Slip Op 30811(U)

April 26, 2016

Supreme Court, New York County

Docket Number: 805203/2013

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

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

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KARIN FUHRMANN,

Plaintiff,

-against-

Index No. 805203/2013

**Decision and Order**

AESTHETIC DENTISTRY BY DIPILLA, P.C., and  
ROBERT P. DIPILLA, D.D.S.,

Defendants.

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In this dental malpractice action, plaintiff Karin Fuhrmann alleges that she treated with defendants Aesthetic Dentistry by DiPilla, P.C. and Robert P. DiPilla, D.D.S. in 2011 and 2012. The purpose of her treatment allegedly was “to improve the plaintiff’s smile and aesthetics by curing her alleged TMJ dysfunction and by restoring the teeth on her upper and lower jaws.” Aff. in Support, p. 2. Due to the allegedly improper restoration, plaintiff contends, plaintiff went from being asymptomatic for TMJ to being symptomatic. She states that she has required extensive subsequent dental work, at the cost of over \$100,000.

On July 17, 2013, plaintiff served a discovery demand on defendants. Among other items, she demanded: 8) a copy of Dr. DiPilla’s dental license; 10) proof of his board certification; 11) proof of his post-graduate training, including continual dental education among other items; and 12) if he is a member, proof of the doctor’s membership in the Academy of General Dentistry and the American Dental Association. Defendants responded on July 22, 2013, including a verification printout stating he had a New York dentistry license and a copy of his bio which

includes a partial list of his credentials and education. Defendants supplemented this response on July 30, including a copy of the doctor's curriculum vitae and of his continuing dental education records from the Academy of General Dentistry (AGD) covering courses he took from August 7, 1992 until January 29, 2010. Plaintiff contends these responses are incomplete because 1) there is no record of Dr. DiPilla's continuing education classes after 2010, 2) there are no transcripts from organizations other than AGD although the doctor was a member of numerous other dental organizations; 3) the printout is not proof of Dr. DiPilla's New York license, and 4) there is no proof of his Michigan license.

Dr. DiPilla's deposition commenced on May 14, 2015 and continued the following day. Plaintiff states that the deposition was not completed because of Dr. DiPilla's illness on May 15, 2015. At the deposition, plaintiff's counsel asked Dr. DiPilla whether he maintained a list of the continuing legal education courses he had taken in Michigan and in New York in order to maintain his licenses. He stated that he had records, although he was not sure whether they were on his computer, and that he could get access to the information. On May 18, 2015, plaintiff served a discovery notice which included a demand for a list of these New York and Michigan courses, from the dates he originally obtained his dental licenses in these States until the present, as well as a supplemental list updating the continuing education courses he took at AGD. Defendant's May 29, 2015 response objected to these demands as overbroad and irrelevant.

Plaintiff's motion, which comes after discussion of this issue at court conferences, seeks to compel compliance with her demands. She alleges that Dr. DiPilla treated her for malocclusion although he lacked the skill and the dental education to treat her TMJ. She states that

for the same reason a curriculum vitae is discoverable, Orzech v. Smith, 12 A.D.3d 1150 (4th Dep't 2004), the material she currently seeks is discoverable as well. Additionally, plaintiff argues, defendants did not object to plaintiff's July 17, 2013 discovery demand and thus waived their right to object now. In opposition, defendants counter that plaintiff failed to object to their July 22, 2013 discovery response and thus she, rather than defendants, waived her right to seek relief with respect to the July 22, 2013 production. As for the May 18, 2015 demand, defendants did object in a timely fashion. Moreover, defendants assert that the materials plaintiff seeks are not material or necessary. Plaintiff replies that though she did not formally move to enforce the 2013 demand earlier, counsel wrote to defendants' attorney twice in early 2014 to pursue the discovery and in no respect waived her right to the information. She states that it is imperative to obtain information relating to Dr. DiPilla's training in matters relating to malocclusion and TMJ as he likely will argue that his training and experience qualified him to treat plaintiff.

After consideration, the Court grants the motion. Defendants did not object to the July 2013 demand and plaintiff made some efforts, both in Court orders and letters, to obtain the information. The timely objection to the 2015 demand bears less weight because it essentially reiterated plaintiff's request for the material defendants had withheld in 2013. Defendants' arguments as to the relevance of the information are unpersuasive, as the scope of discovery is much broader than the scope of admissibility, and plaintiff has set forth a sufficient showing as to why she seeks the discovery in question. Also, as plaintiff points out, Dr. DiPilla stated at deposition that the material plaintiff requests is available and in his office. Thus, there is no undue burden on defendants. To the extent that, after searching his office, the doctor cannot find additional records, he may satisfy plaintiff's demand through an affidavit describing the scope of

his search. Moreover, to the extent that defendants do not provide information about Dr. DiPilla's coursework relating to TMJ and malocclusion, he cannot then rely on such coursework at trial to show his alleged expertise or for other purposes. However, the doctor's coursework after plaintiff's treatment in 2011 and 2012 need not be provided.

Accordingly, it is

ORDERED that the motion is granted; and it is further

ORDERED that, within 30 days of the date of the filing of this order, defendants shall provide a copy of any available continuing legal education credit from the dates of Dr. DiPilla's licenses in New York and Michigan through January 13, 2012. If no materials are available defendants must provide an affidavit attesting to that fact.

Dated: Apr. 26, 2016

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JOAN B. LOBIS, J.S.C.