Radiation Oncology Servs. of Cent. N.Y., P.C. v Our Lady of Lourdes Mem. Hosp., Inc.
2016 NY Slip Op 32722(U)
March 8, 2016
Supreme Court, Cortland County
Docket Number: EF15-462
Judge: Phillip R. Rumsey

At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District at the Tompkins County Courthouse, in the City of Ithaca, New York on the 13th day of November, 2015.

PRESENT: HON. PHILLIP R. RUMSEY
JUSTICE PRESIDING.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CORTLAND

RADIATION ONCOLOGY SERVICES OF CENTRAL NEW YORK, P.C., 1008 COMMONS AVENUE, CORTLAND, NY 13045 AND MICHAEL J. FALLON, M.D., 1008 COMMONS AVENUE, CORTLAND, NY 13045,

Plaintiffs,

v.

OUR LADY OF LOURDES MEMORIAL HOSPITAL, INC., 169 RIVERSIDE DRIVE, BINGHAMTON, NY 13905; KATHY CONNERTON, 169 RIVERSIDE DRIVE, BINGHAMTON, NY 13905; LISA HARRIS, M.D., 169 RIVERSIDE DRIVE, BINGHAMTON, NY 13905; JAN DOMBROWSKI, M.D., 125 RED CREEK DRIVE, SUITE 101, ROCHESTER, NY 14623 AND JOHN DOES 1-15,

Defendants.

DECISION AND ORDER
Index No. EF15-462
RJI No. 2015-0326-M

APPEARANCES:

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PHILLIP R. RUMSEY, J. S. C.

Michael Fallon is a physician specializing in radiation oncology and he is the sole shareholder of Regional Oncology Services of Central New York (ROSCNY). From June 1, 2011 through April 10, 2015, ROSCNY was the exclusive provider of radiation oncology services at Our Lady of Lourdes Memorial Hospital, Inc. (Lourdes) pursuant to a written agreement dated June 19, 2001 that was amended three times – in 2006, 2011 and 2014 (the Coverage Agreement). With limited, short-term exceptions, Fallon was the sole physician providing services to Lourdes through ROSCNY pursuant to the Coverage Agreement, and he also served as Radiation Oncology Medical Director during the relevant time. He received additional compensation for his service as Medical Director. In 2013, Lourdes began to explore affiliation with the University of Texas MD Anderson Cancer Center (MD Anderson), an initiative that was approved by Lourdes's medical staff and its board of directors. Fallon opposed the potential affiliation with MD Anderson and communicated his opposition to Lourdes's management and medical staff (see Affidavit of Michael J. Fallon, M.D., sworn to October 14, 2015 [Fallon Affidavit], ¶ 2, Exhibit 1).

In 2014, as part of the potential affiliation process, MD Anderson began an assessment of cancer services being offered at Lourdes. In connection with the assessment of radiation oncology services, Lourdes provided files for sixteen of Dr. Fallon's cases to MD Anderson for review. MD Anderson initially raised concerns about the quality of care provided by Dr. Fallon in nine of those cases, which it designated as "SMP" for having failed to meet MD Anderson's Standards Management Plan. After reviewing Fallon's response to the initial report, MD Anderson revised its report to denote only four charts as SMP, one of which Fallon and

ROSCNY (plaintiffs) allege was due to a medical oncology issue, not to radiation oncology treatment that Fallon had provided to the patient. Plaintiffs further allege that the SMP designation means only that the care provided was not consistent with treatment protocols established by MD Anderson; it does not mean that the requisite professional standard of care was not met. MD Anderson conducted a further review later in 2014 and subsequently advised Lourdes and Dr. Fallon that he would not be allowed to participate in the MD Anderson network.

Kathryn Connerton replaced David Patak as CEO of Lourdes in December 2014. In early 2015, she sought independent review of the nine patient files that had initially been criticized by MD Anderson, submitting them to Jan Dombrowski, M.D., a board certified radiation oncologist and an associate professor of radiation oncology at the University of Rochester's Medical School. His report was received by Connerton on April 3, 2015. It was critical of the care provided by Dr. Fallon; as summarized by defendants, Dr. Dombrowski opined that Dr. Fallon was not adequately supervising staff and that his care in the relevant cases subjected healthy tissue to unnecessary radiation. Connerton shared Dombrowski's report with Dr. Blansky, president of the Lourdes medical staff. Blansky met with Fallon and asked him to voluntarily refrain from practicing while the Medical Executive Committee investigated concerns about the quality of care he was providing. Fallon refused, and Blansky suspended Fallon's clinical privileges on April 10, 2015.

Blansky chaired a five-person Investigating Committee to review Fallon and it met on four occasions, the last time on June 30, 2015. The Investigating Committee considered Dombrowski's report and reports from radiation oncology specialists whom Fallon had retained to review the cases under investigation, which found that his care was appropriate in each case.

The Investigating Committee attempted to obtain a review from a major academic center, but the three centers that it contacted all declined to review the cases. Blansky then traveled to Rochester to meet personally with Dombrowski and to Houston, Texas to meet personally with Dr. Jhingram at MD Anderson. He also interviewed the Lourdes physicist who worked with Dr. Fallon. The Investigating Committee concluded that Dr. Fallon was a well-trained physician, but that he was not adequately supervising staff and coordinating care. It further concluded that he should be allowed to return to practice, upon the following specific conditions intended to mitigate any quality of care concerns: (1) one year reappointment to the medical staff, rather than the normal two-year term; (2) prospective reviews for all new patients; (3) physician and physicist review of normal tissue tolerances per published Radiation Therapy Oncology Group (RTOG) guidelines for each patient; (4) requiring that a full time on-site radiation oncology physician be present during normal working hours of the Radiation Oncology Department; and (5) random chart reviews be conducted by MD Anderson after six months. On July 14, 2015, the Medical Executive Committee approved the Investigating Committee's report, with the exception of condition four – the requirement that a radiation oncologist be present during all normal business hours – which it determined was a contractual issue that should be referred to Lourdes administration for consideration or further action.

Fallon returned, without issue, under the approved conditions on August 10, 2015. On August 11, staff reported to Connerton that Dr. Fallon told them that he would not see consults nor be available for meetings in the afternoon. Connerton immediately went to the Radiation Oncology Department and spoke to Fallon, advising him that he needed to staff the Department during all business hours. Fallon responded by stating that he could see Lourdes's modest patient

load during morning hours, so that he could see patients at his Cortland practice in the afternoon (as he had been doing without issue since approximately 2006 with Lourdes' knowledge and consent). Lourdes was unwilling to pay Fallon for his "fallow" or downtime when he was not actively treating patients. On August 11, Connerton hand-delivered a letter to Fallon saying that Lourdes considered his actions a breach of the Coverage Agreement and then emailed him a second letter terminating the Coverage Agreement. By letter dated August 27, 2015, Lourdes advised Fallon that it had entered into an agreement to obtain radiation oncology services exclusively from Guthrie Medical Group, P.C.

Plaintiffs commenced this action on July 24, 2015. Defendants made a pre-answer motion to dismiss the complaint or, alternatively, for summary judgment. On August 28, 2015, plaintiffs filed an amended complaint, which asserts the following causes of action:

1. Breach of contact against Lourdes on behalf of ROSCNY for $900,000 per year, for the revenue received pursuant to the Coverage Agreement.

2. Breach of contact against Lourdes on behalf of ROSCNY for $55,000 per year for medical director compensation.

3. Breach of contact against Lourdes by Fallon, as the intended third party beneficiary of the Coverage Agreement, for the $55,000 per year he received as compensation for serving as medical director.

4. Breach of the implied covenant of good faith and fair dealing against Lourdes, by both plaintiffs.

5. Wrongful termination of the Coverage Agreement against Lourdes by ROSCNY for $900,000 per year.

6. Wrongful termination of the Coverage Agreement against Lourdes by Fallon, as the intended third party beneficiary of the Coverage Agreement, for the $55,000 per year he received as compensation for serving as medical director.

7. Libel and slander against Lourdes by Fallon.

8. Libel and slander against Connerton by Fallon.

9. Libel and slander against Lisa Harris, M.D., Vice President of Medical Affairs and Chief Medical Officer for Lourdes, by Fallon.

10. Libel against Dombrowski by Fallon.

Defendants responded by amending their motion to seek dismissal of the amended complaint or, alternatively, for summary judgment. The court heard oral argument on the motion. The court has not elected to exercise its discretion to convert the motion to dismiss into one for summary judgment because, as discussed below, the record presently before the court shows the existence of factual issues for which deposition testimony or further affidavits would reasonably be anticipated to be submitted in support of, or in opposition to, a summary judgment motion made pursuant to CPLR 3212 after joinder of issue (see CPLR 3211[c]; see also Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:44, at 67 [treating a motion to dismiss as a summary judgment motion, on notice to the parties, is appropriate only where "the proof adduced to the court . . . is as complete as it usually is on an outright summary judgment motion under CPLR 3212"]; Higgitt, 2015 Supp Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:44, 2016 Supp Pamph, at 44; see e.g. Giannelli v St. Vincent's Hosp. & Med. Ctr. of N.Y., 160 AD2d 227, 232 [1990]).

On a motion to dismiss, plaintiff's allegations must be accorded the benefit of every possible favorable inference (see Davis v Boeheim, 24 NY3d 262, 268 [2014]; Saha v Record, 177 AD2d 763, 765 [1991]). Defendants' first argument in support of their motion to dismiss the first through fourth and seventh through tenth causes of action is that defendants are entitled to statutory immunity for the acts complained of under both the federal Health Care Quality Improvement Act (42 USC § 11101 et seq.; herein the HCQIA) and under state law, specifically Public Health Law § 2805-j(2), Public Health Law § 2805-m(3) and Education Law §6527(5). Defendants further argue that the defamation claims are barred by the qualified common interest privilege, as all of the allegedly defamatory statements were made during the peer review process or in conjunction with the proposed MD Anderson affiliation.

The HCQIA provides immunity from suit for money damages to participants in professional review actions meeting the standards specified in the statute (see 42 USC § 11111[a]). A professional review action is one taken by a professional review body in the conduct of a professional review activity based on the competence or professional conduct of a physician which affects, or could affect, adversely the health or welfare of patients (see 42 USC § 11112[a][9]). Further, to be entitled to immunity,

"a professional review action must be taken–

(1) in the reasonable belief that the action was in the furtherance of quality health care,
(2) after a reasonable effort to obtain the facts of the matter,
(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

> A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence."

42 USC § 11112(a).

Defendants assert that their actions in reviewing Dr. Fallon, suspending his clinical privileges and ultimately reinstating them, on condition, satisfy each of the four elements necessary to constitute a professional review action. In particular, they contend that their actions originated with the MD Anderson report showing that Dr. Fallon's treatment practices had the potential for harming patients, specifically, by giving inappropriately high doses of radiation to healthy tissue or inappropriately low doses of radiation to cancerous tissue.

In opposition, plaintiffs contend that defendants' actions do not constitute a professional review action because (1) defendants never had a reasonable belief that (a) Fallon's care adversely affected patient health or welfare, or (b) their own actions were taken to further quality health care; and (2) defendants did not make a reasonable effort to timely obtain the facts of the matter. Rather, plaintiffs allege that defendants' sole motivation was to get rid of Dr. Fallon, who vocally opposed the MD Anderson affiliation and who was not accepted for participation in the MD Anderson provider network, so that Lourdes could proceed with its plan to affiliate with MD Anderson. Even without the benefit of having conducted any disclosure, plaintiffs have submitted copies of email correspondence and transcripts of telephone conversations that tend to corroborate their allegations. Thus, plaintiffs' allegations, which must be accorded the benefit of every reasonable inference at this juncture, are sufficient to rebut the presumption that the professional review action at issue meets the standards necessary to obtain immunity under the

HCQIA.[1]

In that regard, plaintiffs make numerous detailed allegations in support of their argument. They allege that Lourdes personnel, including then-CEO Patak and Lisa Harris, pressured Fallon to agree to the MD Anderson affiliation before initiating the Dombrowski review or suspending his clinical privileges (see Fallon Affidavit, ¶¶ 72-101). Lourdes acknowledges that it received the MD Anderson report by August 2014 (see Affidavit of Affidavit of Kathryn Connerton, sworn to August 10, 2015 [Connerton Affidavit], ¶ 12), yet it took no action to investigate the alleged quality of care issues until after it received a second report in December 2014, which prompted it to retain Dombrowski in January 2015. Plaintiffs allege that the lack of action on defendants' part is evidence that they did not view the MD Anderson report as involving any serious question about Fallon's clinical competency (see Fallon Affidavit, ¶ 99).

Plaintiffs also allege that defendants' lack of concern about Fallon's competency is further evidenced by statements made by Lisa Harris, M.D., Vice President for Medical Affairs and Chief Medical Officer, to Fallon during a telephone conversation on September 26, 2014 –

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[1] Defendants' arguments that Fallon was contractually required to support the MD Anderson affiliation or that their subjective motives are irrelevant are unavailing at this early juncture. First, the third amendment to the Coverage Agreement specifically requires only that he "participate in community activities that support the mission of the department of radiation oncology and Lourdes Regional Cancer Program, including but not limited to affiliations with MD Anderson, if applicable" (Third Amendment to Coverage Agreement, dated October 15, 2014, Exhibit A [Medical Director Position Description], ¶ 8); the amendment does not require that Fallon support, in every respect, Lourdes's efforts to affiliate with MD Anderson. While the subjective bias or bad faith motives of peer reviewers are not relevant to HCQIA immunity review where there is no evidence tending to rebut the presumption that a professional review action was undertaken and is entitled to immunity (see Hooda v W.C.A. Service Corp., 2013 WL 2161821 [WDNY 2013]), plaintiffs here, unlike the plaintiff in Hooda, have alleged that no professional review action was conducted that is entitled to immunity because there was no reasonable concern that Dr. Fallon endangered patient health or welfare.

after the initial MD Anderson review had been provided to Lourdes – that "[Lourdes] really does appreciate all the work that you do and all the work that you've done for cancer treatment in the area. There's no getting around that at all, and I don't know that we've really expressed that appreciation appropriately to you" (Telephone Transcript One, p. 70). Harris sent Fallon an email on November 7, 2014, advising that if he did not consent to a peer review process with an MD Anderson physician, that he would be solely responsible for halting the affiliation process and causing it to be recommenced at significant cost to Lourdes. These statements were corroborated by statements made by Dr. James Steinmetz to Fallon during a telephone conversation on February 17, 2015, confirming that Lourdes was very committed to proceeding with the MD Anderson affiliation, that Fallon was perceived as the "major roadblock" (Telephone Transcript One, p. 92) and that Fallon is a "good clinician who cares for his patients" (id., p. 90, see also pp. 92 [a good clinician], p. 94 ["it's not that the Board thinks you're a bad clinician, it's that they want somebody who is going to work with MD Anderson"], p. 96 [Steinmetz expressed that he had been happy with all referrals he made to Fallon]).

During a telephone conversation on February 26, 2015, Connerton stated that a negative report from Dombrowski which allowed Lourdes to terminate Fallon would facilitate the MD Anderson affiliation, and that the affiliation might not occur if Dombrowski's report was positive (see Fallon Affidavit, ¶ 135). Plaintiffs further allege that Joseph Carpenter, the nonphysician director of the Radiation Oncology Department, had received a copy of the Dombrowski report and confirmed Fallon's suspicions that it had been perfectly composed to get rid of Fallon (id., ¶ 160). Fallon has also submitted evidence suggesting that Lourdes's claims that the Dombrowski report was independent are false, noting that there appear to have been communications among

Lourdes, MD Anderson, and Dombrowski as the report was being prepared (see Fallon Affidavit, ¶¶ 155-158).

Moreover, the fact that there had never been any questions about the quality of care that Dr. Fallon provided during the entire term of the Coverage Agreement may also be relevant to the issue of whether defendants' actions were founded upon a reasonable belief that Dr. Fallon's treatment endangered patient health or welfare. In 2012, the American College of Radiation Oncology reviewed 25 charts from the Radiation Oncology Department and issued a report giving Fallon a full three-year accreditation (see Fallon Affidavit, ¶ 100, Exhibit 21). In July 2013, the Radiation Oncology Department passed an audit conducted for New York State Department of Health certification with no deficiencies noted. Dr. Fallon further alleges – without contradiction – that he was never the subject of any medical disciplinary proceedings, nor were any claims asserted against him for medical malpractice for care rendered to Lourdes's patients.

With respect to Dr. Dombrowski, plaintiffs allege that he is not entitled to immunity pursuant to the HCQIA because his report is so factually inaccurate as to suggest that he had to have known that it was false (see 42 USC § 11111[a][2] [HCQIA does not provide immunity to a person who knowingly provides false information to a professional review body regarding the competence of a physician]; Colantonio v Mercy Med. Ctr., 73 AD3d 966, 969 [2010] [plaintiff raised a triable issue of fact as whether some defendants knowingly provided false information about him]).[2] Dombrowski reviewed the nine charts that MD Anderson originally identified as

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[2] Plaintiffs also assert that Dombrowski may have been aware that Fallon had an adversarial relationship with the University of Rochester, where he left a residency program after completing only one year after reporting perceived improprieties (see e.g. Fallon Affidavit, ¶

not meeting its standards. Plaintiffs note that the Dombrowski report goes well beyond the MD Anderson report, which was ultimately revised to flag only three of the files as SMP for radiation oncology reasons (a fourth for medical oncology reasons), yet Dombrowski found that Fallon either gave inappropriately high doses of radiation to healthy tissue or inappropriately low doses of radiation to cancerous tissue, or used inappropriate techniques in all nine files that he reviewed.

Plaintiffs further note that the Dombrowski report is completely at odds with the reports which Fallon obtained from other specialists, who sharply criticized Dombrowski's opinions (see Fallon Affidavit, ¶¶ 146-153). Moreover, plaintiffs allege that the Dombrowski report was essentially rejected by the Medical Executive Committee, noting that its chair, Dr. Blansky, stated that it "was so extreme in many ways that we had, we had trouble with it" (Telephone Transcript One, p. 284), and that another member, Dr. Sanjiv Patel, stated that "it seems very, you know, very speculative and very jaded, you know, and I can tell you honestly that none of us on that committee feel that it's an honest interpretation" (Telephone Transcript Two, p. 2).

It bears emphasizing that the foregoing recital of plaintiffs' allegations that were considered in deciding this motion does not constitute a determination establishing the truth of any specific allegation mentioned. Rather, the court was, as required, according plaintiffs' allegations the benefit of every possible inference. Moreover, plaintiffs' specific allegations regarding statements made by defendants and other employees of Lourdes tending to show that the investigation, suspension and reinstatement of Dr. Fallon was not done based on concerns of patient safety, but rather to further the affiliation with MD Anderson demonstrate that the record

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presented on this motion is not as complete as would be anticipated on a motion for summary judgment; in light of such allegations, it is anticipated that the record on a summary judgment motion would include deposition testimony or affidavits from the involved individuals.

Statements made with malice are not entitled to immunity under the cited provisions of the Public Health Law and Education Law, nor are they protected by the common interest privilege (see Colantonio, 73 AD3d at 969). The same allegations that are sufficient to show that defendants may not be entitled to immunity pursuant to the HCQIA are sufficient to show that the relevant statements may have been made with malice (id. at 969; see also Giannelli, 160 AD2d at 231 [motion seeking dismissal on the grounds of statutory immunity, pursuant to Education Law § 6527 and Public Health Law § 2805-j[2] and of common law privilege was properly denied where plaintiff alleged that his privileges had been suspended in retaliation for his criticism of the operations of the hospital's cardiac unit and its administrator]).

Defendants argue that the first four causes of action may not be maintained because they are based completely upon Dr. Fallon's precautionary suspension and subsequent restriction of his privileges and he failed to first submit his claim to the Public Health Commission, as required by Public Health Law § 2801-b. They are partially correct. The causes of action asserted by ROSCNY are not based entirely upon Dr. Fallon's suspension; rather, ROSCNY alleges that it had the contractual right to provide services from oncologists other than Fallon, including his role as Medical Director, and that Lourdes refused to allow it to do so. However, the third cause of action, by which Fallon seeks compensation in his individual capacity for being wrongfully deprived of the opportunity to serve as Medical Director by his precautionary suspension, is barred because he did not file with the Public Health Commission, even though he seeks only

money damages and not reinstatement (see Gelbard v Genesee Hosp., 87 NY2d 691 [1996]; Falk v Anesthesia Assoc. of Jamaica, 228 AD2d 326 [1996]).

In their fifth and sixth causes of action, plaintiffs state claims for wrongful termination of the Coverage Agreement based on Connerton's termination of the contract and on Fallon's refusal to staff the clinic during all regular business hours. It bears noting that defendants conceded at oral argument that they do not have immunity for the fifth and sixth causes of action. Notwithstanding defendants' argument to the contrary, the language of the Coverage Agreement does not specifically require that ROSCNY staff the Radiation Department with an oncologist during all regular business hours as set by Lourdes. Rather, it requires that ROSCNY only provide a radiation oncologist or ontologists as "reasonably necessary to meet Cancer Center patient need and the Cancer Center's reasonable business requirements during Cancer Center business hours" (Coverage Agreement, ¶ 1).[3] In addition, the most recent amendment to the Medical Director Position Description delegates to the Medical Director, jointly with the Director of Oncology, the duty to determine the organizational structure and staffing of the Radiation Oncology Department, and the parties had a practice dating back to 2006 under which Dr. Fallon would see Lourdes patients in the morning and patients at ROSCNY's Cortland office in the afternoon. Thus, there are issues of fact regarding whether ROSCNY was fulfilling its duty to provide physician staffing meeting the reasonable needs of the Radiation Oncology Department that preclude granting defendants' motion to dismiss.

Defendants' remaining arguments have been considered and found to lack merit.

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[3] The Coverage Agreement also provides that ROSCNY is an independent contractor whose services "shall be free of any specific direction or control by [Lourdes]" (id., ¶ 3).

Plaintiffs did not oppose that portion of defendants' motion seeking dismissal against the Doe defendants; accordingly, it is granted, the complaint is dismissed against John Does 1-15, and the caption shall be amended by deleting John Does 1-15 as defendants.

Inasmuch as neither party has prevailed on the merits of any material issue, no determination may presently be made on defendants' application for an award of attorneys' fees. Accordingly, it is denied, without prejudice, on the basis that it is premature.

Based on the foregoing, defendants' motion is granted, to the extent of (1) dismissing the amended complaint against the Doe defendants and amending the caption accordingly; and (2) dismissing the third cause of action asserted in the amended complaint. Defendants' motion is otherwise denied, without prejudice to defendants filing a motion for summary judgment after joinder of issue (see Giannelli, 160 AD2d at 232) or renewing their application for attorneys' fees.

This decision constitutes the order of the court. The transmittal of copies of this decision and order by the court shall not constitute notice of entry (see CPLR 5513).

Dated: March 8, 2016
Cortland, New York

Phillip R. Rumsey

Digitally signed by Phillip R. Rumsey
DN: cn=Phillip R. Rumsey, o, ou, email=PRumsey@NYCourts.gov, c=US
Date: 2016.03.08 13:50:19 -05'00'

HON. PHILLIP R. RUMSEY
Supreme Court Justice

ENTER

The following documents were filed with the Clerk of the County of Cortland:

- Notice of motion dated September 16, 2015.
- Affirmation of James S. Gleason, Esq. dated August 11, 2015, with Exhibit A.
- Affidavit of Lisa Harris, M.D., sworn to August 7, 2015, with Exhibits A – I.
- Affidavit of Jan Dombroski, M.D., sworn to August 10, 2015, with Exhibits A – B.
- Affidavit of Kathryn Connerton, sworn to August 10, 2015, with Exhibits A – I.
- Affidavit of Richard Blansky, M.D., sworn to August 10, 2015, with Exhibit A.
- Supplemental Affidavit of Kathryn Connerton, sworn to September 11, 2015, with Exhibits A – D.
- Supplemental Affirmation of James S. Gleason, Esq. dated September 16, 2015, with Exhibits A – C.
- Affidavit of Michael J. Fallon, M.D., sworn to October 14, 2015, with Exhibits 1 – 48 and Telephone Transcripts One and Two.
- Reply Affidavit of Kathryn Connerton, sworn to October 27, 2015, with Exhibits A – B.
- Reply Affidavit of Richard Blansky, M.D., sworn to October 27, 2015
- Original Decision and Order dated March 8, 2016.