

Rozon v Schottenstein
2018 NY Slip Op 31675(U)
July 17, 2018
Supreme Court, New York County
Docket Number: 805014/2016
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

-----X
Carola Rozon,

Plaintiff,

- v -

Edwin M. Schottenstein, MD,

Defendant.
-----X

Index No.
805014/2016

**DECISION
and ORDER**

Mot. Seq. #001

HON. EILEEN A. RAKOWER, J.S.C.

Defendant moves to vacate the Note of Issue filed by Plaintiff on February 1, 2018, compel Plaintiff to provide requested authorizations, and extend his time to file a motion for summary judgment. Plaintiff cross moves for a protective order.

Relevant Factual Allegations and Background

According to the Complaint, Plaintiff suffered, “serious and severe permanent injuries included [sic], but not limited to...loss of enjoyment of life.” Plaintiff served a Bill of Particulars on July 25, 2016. In the Bill of Particulars, Plaintiff alleges that Defendant was negligent during the treatment of her right eye cataract. Plaintiff alleges injuries pertaining to her eye, “emotional distress” and “pain and suffering.” Plaintiff alleges that these injuries, including “emotional distress” and “pain and suffering” are all permanent in nature. It is further alleged that the negligence occurred on December 31, 2013, and that Plaintiff missed work for a period of five months due to these injuries.

On October 18, 2016, Defendant requested authorizations for Plaintiff’s past and current medical treatment providers. Specifically, Defendant sought authorizations for 13 medical providers, including: a cardiologist, an ophthalmologist, two orthopedists, a neurologist, a gastroenterologist, a podiatrist, a dentist, a family practitioner, and three providers who prescribed medications used

to treat hypertension and diabetes. On November 1, 2016, Defendant served another demand for authorizations for New York Presbyterian Hospital and Mount Sinai Hospital. By letter dated November 22, 2016, Plaintiff responded to Defendant's October 18, 2016 demand and provided authorizations for an ophthalmologist, and a family practitioner, Avraham Henoch, M.D. ("Dr. Henoch"). Plaintiff objected to providing the rest of the authorizations on the basis that the records were "privileged and confidential."

On December 6, 2016, Defendant served another Demand for Authorizations for some of the providers that were mentioned in Dr. Henoch's records. This Demand reiterated five of the previous requests, and additionally requested authorizations relating to physical therapy, physical rehabilitation, radiology, dermatology, rheumatology, mental health, and hospital records. On January 3, 2017, Defendant served a Demand for Authorizations requesting authorizations for physical therapy, gynecology, hematology, and radiology records.

On March 6, 2017, Defendant served a Demand for Authorizations reiterating previous outstanding requests, including the authorization for New York Presbyterian Hospital where Plaintiff received ophthalmological treatment. Defendant also requested authorizations for Mount Sinai Hospital, and Dr. Roberto Crotto.

To date, Plaintiff has provided authorizations for Dr. Adam Goldman (cardiologist), Dr. Anupama Goel (hematologist), Upper Manhattan Mental Health center, Metro Cardiac Care, LabCorp, Dr. Dennis J. Roggeman (cardiologist), Metropolitan Hospital (authorization only provided for "treatment for hypertension in year 2008"), Doshi Diagnostic Imaging (authorization only provided for "stress test in year 2008"), and McLean Heights Medical Professionals (cardiology). Plaintiff objected to the remaining requests for authorizations.

Pending Motion and Cross Motion

Defendant thereafter brought the pending motion which seeks to compel the following thirty-two outstanding authorizations. Defendant argues that Plaintiff "has placed her entire medical history in issue by affirmatively placing her life expectancy in issue." Defendant argues, alternatively, that even if Plaintiff has not placed her entire medical history in issue, the requested records are relevant.

Plaintiff argues that she is entitled to a protective order because the materials sought are not material or necessary to the instant litigation or to Defendant's

defense. Plaintiff argues that Defendant's demands are a "fishing expedition," the purported relevancy of the demands are based upon medical reasoning not supported by an expert, and Defendant failed to ask Plaintiff at her EBT as to whether there was a connection between the records of the requested medical providers and her claims of malpractice and eye injury.

Plaintiff also seeks "the removal of the motion and cross-motion from public view on the E-filing system and [to] seal these proceedings to protect plaintiff's right to the privacy of her privileged and confidential medical records." Plaintiff contends, "In concert with publishing her medical records, defendant has allowed public access to various items of confidential privileged information (CPI) contained within, such as her Social Security number, date of birth and health insurance account numbers." However, all CPI has been redacted on the public e-filing system and is not subject to public view.

Plaintiff also requests that this Court "take arguments on these motions in camera so that further and continued violation of plaintiff's right to maintain the privacy of her privileged and confidential records be avoided."

Relevant Standard/Law

CPLR § 3103[a] provides that a protective order may be warranted in order "to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." CPLR § 3101[a] generally provides that, "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has held that the term "material and necessary" is to be given a liberal interpretation in favor of the disclosure of "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity," and that "[t]he test is one of usefulness and reason." (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]).

"It is well settled that a party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue." (*Cynthia B. v. New Rochelle Hosp. Med. Ctr.*, 60 N.Y.2d 452, 456-457 [1983] [citations and footnote omitted]). "[A] party should not be permitted to affirmatively assert a medical condition in seeking damages or in defending against liability while simultaneously relying on the confidential physician-patient relationship as a sword

to thwart the opposition in its efforts to uncover facts critical to disputing the party's claim.” (*Dillenbeck v. Hess*, 73 N.Y.2d 278, 287 [1989]). “[O]nce the patient has voluntarily presented a picture of his or her medical condition to the court in a particular court proceeding, it is only fair and in keeping with the liberal discovery provisions of the CPLR to permit the opposing party to obtain whatever information is necessary to present a full and fair picture of that condition.” (*Matter of Farrow v. Allen*, 194 A.D.2d 40, 45–46 [1st Dept 1993]). “However, it is equally well-settled that ‘[t]he waiver of the physician-patient privilege made by a party who affirmatively asserts a physical condition in its pleading does not permit discovery of information involving unrelated illnesses and treatments.’” (*McLeod v. Metro. Transp. Auth.*, 47 Misc. 3d 1219(A), 17 N.Y.S.3d 383 (N.Y. Sup. Ct. 2015) (citations omitted).

In *Gumbs v. Flushing Town Ctr. III, L.P.* (114 A.D.3d 573 [1st Dept. 2014]), the plaintiff sought damages for a torn rotator cuff, fractured ankle and other orthopedic injuries. The defendants moved to strike the plaintiff's complaint for his refusal to provide authorizations for the release of certain medical records, such as those from his primary care physician and cardiologist. (*Id.*) In affirming the lower court's decision to deny the defendants' motion, the Court held that the plaintiff “**did not place his entire medical condition in controversy by suing to recover damages for orthopedic injuries**” and that the defendants “**have not shown that the records they seek are related to the claimed injuries.**” (*Id.*)

Authorizations at issue

The following are the authorizations that are at issue.

Authorizations which Defendant contends that Plaintiff improperly limited:

- (1) Metropolitan Hospital

Defendant's position: The authorization Plaintiff provided for this provider was improperly limited to “treatment for hypertension in 2008” which had no responsive documents. Defendant seeks “an unlimited authorization for plaintiff's entire medical record from Metropolitan Hospital, as it seems that the records clerk at Metropolitan Hospital is unable or unwilling to distinguish which treatment is related to hypertension and which is not.”

Plaintiff's position: Plaintiff contends that defense counsel was provided a duly executed authorization to obtain certain records. Plaintiff contends “the

fact that the provider does not wish to comply with the defendant's request has nothing to do with plaintiff." Plaintiff suggests the defense "either issue a subpoena for the records or ask the Court to compel the facility to appropriately respond to the request rather than ask the plaintiff to waive her right to maintain the privacy of her confidential and privileged medical records."

Ruling: Plaintiff has complied with her obligation in providing Defendant with an authorization limited to "treatment for hypertension in 2008." Defendant may proceed with a subpoena.

- (2) Doshi Diagnostic Imaging

Defendant's position: The authorization Plaintiff provided for this provider was improperly limited to "Stress test in year 2008." Defendant states that the records received do not include a stress test. Defendant seeks an unrestricted authorization from Doshi Diagnostic Imaging.

Plaintiff's position: Plaintiff provided an authorization for records of a nuclear stress test from 2008.

Ruling: Plaintiff has complied with her obligation in providing Defendant with an authorization limited to "Stress test in year 2008."

Authorization for records from a physician that did not treat Plaintiff:

- (3) Dr. Roberto Crotto

Defendant's position: Plaintiff testified that she intended to see this provider for treatment of her eyes and therefore these records are relevant.

Plaintiff's position: Plaintiff testified that she "may see" this ophthalmologist. Plaintiff then chose to see a different physician. An authorization for records from that physician has already been provided.

Ruling: Plaintiff shall provide an authorization to allow Defendant to obtain Dr. Crotto's records for Plaintiff.

Authorizations that were improperly objected to:

- (4) Anna Pilzer

Defendant's position: According to VIM Drug records, Anna Pilzer prescribed Plaintiff for Amlodipine, Clonidine, Actoplus, and Glyburide. These medications are for hypertension and diabetes, and are therefore relevant to this case.

Plaintiff's position: Plaintiff contends that this individual is not a licensed medical doctor and "is a physician's assistant who worked at Dr. Henoch's office and prescribed medication under his supervision and direction."

Ruling: Plaintiff shall provide an authorization to allow Defendant to obtain all records pertaining to Pilzer's medical treatment of Plaintiff.

- (5) Christine Padilla

Defendant's position: According to VIM Drug records, Christine Padilla prescribed Plaintiff for Amlodipine and Glyburide in 2011. These medications are for hypertension and diabetes, and are therefore relevant to this case.

Plaintiff's position: Plaintiff contends that this individual is not a licensed medical doctor and is a physician's assistant who worked at Dr. Henoch's office and prescribed medication under his supervision and direction.

Ruling: Plaintiff shall provide an authorization to allow Defendant to obtain all records pertaining to Padilla's medical treatment of Plaintiff.

Authorizations where plaintiff rejected on the basis that she did not recall receiving treatment:

- (6) Mount Sinai Hospital

Defendant's position: Plaintiff objected on the basis that she did not recall receiving treatment at this facility. Defendant states that Mount Sinai is frequently mentioned in Plaintiff's Affinity Health Plan records, and it appears that Plaintiff received treatment there approximately nineteen times in 2008 and 2009.

Plaintiff's position: Plaintiff states that plaintiff has not attended the Mount Sinai Hospital. Plaintiff attended St. Luke's Roosevelt Hospital, which "became part of the Mount Sinai Hospital system during the time in question" and was renamed Mount Sinai St. Luke's Roosevelt Hospital.

Ruling: Plaintiff shall provide an authorization to allow Defendant to obtain all records relating to Plaintiff's care at Mount Sinai Hospital.

- (7) SLR Diagnostic Radiology

Defendant's position: Plaintiff objected on the basis that she did not recall receiving treatment at this facility. Defendant states that SLR Diagnostic Radiology is frequently mentioned in Plaintiff's Affinity Health Plan records.

Plaintiff's position: Plaintiff states that this office is the radiology lab at St. Luke's Roosevelt Hospital where plaintiff "had imagery performed in connection with gynecology, mammography, orthopedic and pulmonology appointments" at the hospital.

Ruling: No relevancy has been established for the requested SLR Diagnostic Radiology records.

- (8) Empire Diagnostic Solutions

Defendant's position: Plaintiff objected on the basis that she did not recall receiving treatment at this facility. Defendant states that according to Dr. Henoeh's records, Plaintiff received an Aortal Doppler Ultrasound here in 2014.

Plaintiff's position: Plaintiff states that the record of an Aortal Doppler Ultrasound from 2014 is included in Dr. Henoeh's records. Plaintiff argues that this is irrelevant because the exam was "entirely normal."

Ruling: Plaintiff is directed to provide an authorization for Empire Diagnostic Solutions.

- (9) Imaging Medical Solutions

Defendant's position: Plaintiff objected on the basis that she did not recall receiving treatment at this facility. Defendant states that "according to the Heno records, she received treatment there in 2010."

Plaintiff's position: Plaintiff does not articulate any further objection.

Ruling: Plaintiff is directed to provide an authorization for Imaging Medical Solutions.

Authorizations for Orthopedic Records:

- (10) Dr. Gisela Zapata

Defendant's position: Dr. Zapata is a rheumatologist. Plaintiff objected to providing these records because they relate only to Plaintiff's swollen elbow in 2010. Defendant argues that "swelling is caused by systemic problems with the circulatory and lymphatic systems, and can be related to hypertension and diabetes ... [which] also affect the human eye, and therefore, these records are particularly relevant." Also, "when plaintiff saw Dr. Zapata, she complained that the elbow pain radiated from her left breast/chest area and was associated with palpitations." Defendant argues that these records are "related to systemic medical conditions of the plaintiff involving cardiac issues" which "bears directly on a person's intraocular pressure (the pressure within their eye)."

Plaintiff's position: Plaintiff argues that, following a referral by Dr. Zapata to an orthopedist within "Clinica Modelo," Plaintiff was diagnosed with "degenerative changes of the left hand and not a rheumatological disorder." Plaintiff argues these records are not relevant because there is no evidence of a systematic disorder as claimed by Defendant.

Ruling: No relevancy has been established for the requested records.

- (11) Clinica Modelo

Defendant's position: Plaintiff objected on the basis that these records were unrelated, privileged and confidential orthopedic records pertaining to a hand/shoulder complaint. Defendant contends that the complaint "was likely symptomatic of underlying neurological and/or cardiological issues." Defendant contends that Plaintiff "complains of persistent pain and inflammation, and [since] there is no known cause of this pain ..., there is an underlying systemic issue, such as a neurological, cardiological, or rheumatological issue."

Plaintiff's position: Plaintiff asserts that the defense counsel's argument is stated in "a fit of absolute madness." Plaintiff argues that no "underlying systemic issue" was recognized but that "tendinosis of the shoulder and degenerative changes of the left hand" were diagnosed.

Ruling: No relevancy has been established for the requested records.

- (12) Dr. Sandra Nickens

Defendant's position: Plaintiff objected on the grounds that the records are "unrelated privileged and confidential physical therapy (orthopedic) records." Defendant states that Dr. Nickens treated Plaintiff for similar complaints as Dr. Zapata. Dr. Nickens also "planned to 'increase the patients (sic) circulation and independence on ADLS [activities of daily living].'" Defendant contends that "these records are relevant as they concern the plaintiff's circulation, which relates to cardiac issues and hypertension, and are relevant to any 'pain and suffering' and 'loss of enjoyment of life' claims by the plaintiff as they indicate she already had difficulty with her daily activities prior to the cataract surgery at issue in this case."

Plaintiff's position: Plaintiff states that Dr. Nickens' treatment related to a "dislocated shoulder occasioned by reason of a fall."

Ruling: No relevancy has been established for the requested records.

- (13) Uptown Healthcare Management:

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential orthopedic records relating to 2008 right shoulder pain. Defendant contends "it is likely that the treatment received at this facility is for similar shoulder and extremity injuries as those treated by Dr. Nickens and Dr. Zapata, above" and may be indicative of an underlying systemic issue, or cardiac condition.

Plaintiff's position: Plaintiff states that treatment was for a 2008 shoulder dislocation and does not relate to any other providers. Plaintiff argues that Plaintiff's dislocation is not indicative of a systemic issue.

Ruling: No relevancy has been established for the requested records.

- (14) Theradynamics Physical Rehabilitation

Defendant's position: Plaintiff objected on the basis that these records were unrelated, privileged and confidential orthopedic records related to a shoulder injury. Defendant contends that they are indicative of "an underlying systemic issue."

Plaintiff's position: Plaintiff states that the request relates to "physical therapy for left shoulder pain."

Ruling: No relevancy has been established for the requested records.

- (15) Nolia Medical, P.C.

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential orthopedic records related to a shoulder injury. Defendant contends, "Plaintiff's orthopedic records as [to] her orthopedic injuries are related to her neurological, cardiological, and rheumatological issues ... [and] are relevant to plaintiff's claim of 'loss of enjoyment of life' as her apparently significant and long-lasting orthopedic issues likely also contribute to her alleged 'loss of enjoyment of life.'"

Plaintiff's position: Plaintiff states that Nolia Medical, P.C., is the medical practice of Dr. Nickens, who treated Plaintiff for a "dislocated shoulder occasioned by reason of a fall."

Ruling: No relevancy has been established for the requested records.

- (16) Danielle Wittman, M.D.

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential orthopedic records. Defendant states that they are indicative of a systematic condition and relevant.

Plaintiff's position: Plaintiff states that the request relates to "orthopedic treatment."

Ruling: No relevancy has been established for the requested records.

- (17) Dr. Stuart Kitton

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential podiatry records. Defendant contends, "However, as noted above, the plaintiff's issues with her extremities may be symptomatic of her other underlying medical conditions. Certainly, issues in plaintiff's feet may be caused by poor circulation or nerve damage. Therefore, these records are relevant."

Plaintiff's position: Plaintiff was treated by Dr. Kitton for "overlapping 3rd and 4th toes causing pain when walking." Plaintiff contends that these records are not relevant to Plaintiff's claim for injuries to her eye.

Ruling: No relevancy has been established for the requested records.

- (18) Dr. Paul Hobeika

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential orthopedic records concerning left

elbow pain in 2010. Defendant argues that “plaintiff’s elbow, shoulder, and other arm pain was, at least partially, caused by neurological and cardiological issues.” Defendant argues, “These were not simply bruises. Her arm pain was symptomatic of greater systemic issues that are all relevant to this case.”

Plaintiff’s position: Plaintiff states that the orthopedic treatment was received for “left elbow pain and right shoulder rotator cuff tear.” Plaintiff argues that this pain was unrelated to the “manufactured diagnosis” presented by the defense counsel of “‘neurological and cardiac issues’ that are ‘symptomatic of greater systemic issues.’” Plaintiff argues that these records are therefore irrelevant.

Ruling: No relevancy has been established for the requested records.

- (19) Dr. Casilda Balmaceda

Defendant’s position: Plaintiff objected on the basis that these records were unrelated privileged and confidential records concerning hand pain in 2009. Defendant argues, “However, this hand pain was actually paresthesia, which is a symptom of neurological disease or traumatic nerve damage.” Defendant argues, “As neurological disease or nerve damage is relevant to plaintiff’s life expectancy, overall medical condition, and ability to enjoy life, these records are relevant.” Defendant further argues, “neurological diseases, such as optic neuritis, can cause vision loss.” Defendant further states that Dr. Balmaceda prescribed Lyrica to Plaintiff, which is used to treat nerve damage caused by diabetes and can have serious side effects including blurred vision.

Plaintiff’s position: Defendant argued relevance on the basis that “neurological diseases, such as optic neuritis, can cause vision loss.” Plaintiff contends that because “there is no evidence whatsoever that plaintiff has ever suffered from such a condition,” these records are unrelated.

Ruling: Plaintiff is directed to provide an authorization for Dr. Balmaceda.

- (20) Third Avenue Open M.R.I.

Defendant’s position: Plaintiff objected on the basis that these records were unrelated privileged and confidential orthopedic records. Defendant that they

are related to other systematic issues and “the Henoch records indicate that plaintiff was diagnosed with joint disease by this provider, which is directly relevant to her ‘pain and suffering’ and ‘loss of enjoyment of life’ claim.”

Plaintiff’s position: Plaintiff states that her treatment at Third Avenue Open MRI involved “various CT scans including normal CT scan of abdomen/pelvis, finding of mild enlargement of aorta, degenerative changes of vertebral column, Normal x-ray of right shoulder, bone density exam noted to be low risk for fracture, routine normal mammography, MRI right shoulder demonstrating degenerative disease.”

Ruling: No relevancy has been established for the requested records.

Other Records: Gastroenterology, Mammography, Pulmonology, Dermatology

- (21) Dr. Ricardo Pou

Defendant’s position: Plaintiff objected to producing these records on the basis that they relate to a 2009 routine colonoscopy. Defendant states, however, that Plaintiff was also treated with Dr. Pou in 2015, and was screened for malignant neoplasm, had 3 polyps removed, and was diagnosed with diverticulosis at that time. Defendant contends that these records are relevant because they relate to Plaintiff’s overall medical condition, her “pain and suffering,” and her “loss of enjoyment of life” claims.

Plaintiff’s position: Plaintiff’s colonoscopy report by Dr. Pou demonstrates benign polyps and moderate diverticulosis and recommends “there is no need for further GI evaluation.” Plaintiff argues that these records are not relevant as they are “not demonstrative of cancer as defense counsel suggests.”

Ruling: No relevancy has been established for the requested records.

- (22) Westside GI

Defendant’s position: Plaintiff objected on the basis that these records were unrelated privileged and confidential gastroenterology records. Defendant states, “However, plaintiff also had polyps removed here. Therefore, these

records are relevant as they relate to plaintiff's overall medical condition and her 'loss of enjoyment of life' claim."

Plaintiff's position: Plaintiff states that the request relates to "gastrointestinal records demonstrating removal of benign polyps" and does not seek relevant information.

Ruling: No relevancy has been established for the requested records.

- (23) Third Avenue Radiology and Imaging, P.C.

Defendant's position: Plaintiff objected on the basis that these records are unrelated privileged and confidential renal ultrasound and orthopedic records. Defendant states, however, that "Henoch's records also indicate that Third Avenue Radiology and Imaging, P.C. diagnosed Plaintiff with a fatty infiltration liver in 2009., a common cause of liver disease." Defendants contend, "As liver disease clearly affects a person's life expectancy, overall health, pain and suffering, and enjoyment of life, these records are relevant."

Plaintiff's position: Plaintiff states that the request relates to treatment for "[f]atty infiltration of liver."

Ruling: No relevancy has been established for the requested records.

- (24) Harlem Hospital:

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential mammography records. Defendant argues that since Plaintiff's information has been incorrect in this case for other records requested, Defendant is entitled to an unrestricted authorization for Harlem Hospital.

Plaintiff's position: Plaintiff argues that mammography records are irrelevant.

Ruling: No relevancy has been established for the requested records.

- (25) West Side Radiology Associates

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential mammography records. Defendant argues that since Plaintiff's information has been incorrect in this case for other records requested and mammography records can be related to Plaintiff's life expectancy, Defendant is entitled to an unrestricted authorization for West Side Radiology Associates

Plaintiff's position: Plaintiff argued that normal mammography results do not relate to life expectancy.

Ruling: No relevancy has been established for the requested records.

- (26) Broadway Medical and Dental Center

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential pulmonology records related to a lung nodule. Defendant argues, "Clearly, a lung nodule, which can be a symptom of lung cancer, can have serious implications as to plaintiff's life expectancy, pain and suffering, and ability to enjoy life."

Plaintiff's position: Plaintiff states that plaintiff has not been diagnosed with lung cancer.

Ruling: No relevancy has been established for the requested records.

- (27) Dermatology Associates

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential dermatology records. Defendant contends, "However, dermatology records are relevant to plaintiff's 'loss of enjoyment of life' claim and may also lead to evidence relevant to her inability to work for five months, and confinement to home and bed."

Plaintiff's position: Plaintiff argues the "plaintiff's 2008 and 2011 visit to a dermatologist for dermatitis" has no relevancy to Plaintiff's claims.

Ruling: No relevancy has been established for the requested records.

- (28) Andrew Alexis, M.D.

Defendant's position: Plaintiff objected on the basis that these records were unrelated privileged and confidential dermatology records. However, Defendant contends that they are relevant to her loss of enjoyment claim.

Plaintiff's position: Plaintiff argues her dermatological records are not relevant to her claims.

Ruling: No relevancy has been established for the requested records.

OTHER REQUESTS – NOT AT ISSUE

Defendant is withdrawing his request for authorizations to obtain Plaintiff's dental records from Robert Mines, DDS. Plaintiff states that she provided an authorization for records from Home Health Radiology Services (relating to "Holter monitoring services for January 2008") and will provide another one. Plaintiff states that she will provide an authorization to obtain her cardiac records from St Luke's Roosevelt Hospital.

Wherefore it is hereby

ORDERED that Defendant's motion to vacate the Note of Issue filed by Plaintiff on February 1, 2018 is denied; and it is further

ORDERED that Defendant's time to file a summary judgment motion is extended for 60 days from the date of this Order; and it is further

ORDERED that the motion to compel and cross motion for a protective order are resolved as follows; and it is further

ORDERED that Plaintiff is directed to provide an authorization for the following providers within 30 days of the date of this Order: Dr. Roberto Crotto;

Anna Pilzer; Christine Padilla; Mount Sinai Hospital; Empire Diagnostic Solutions; Imaging Medical Solutions; and Dr. Casilda Balmaceda.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: July 17 2018



EILEEN A. RAKOWER, J.S.C.