

Siemanowicz v Sculco
2020 NY Slip Op 31699(U)
May 29, 2020
Supreme Court, New York County
Docket Number: 805246/2019
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**LISA SIEMANOWICZ, As Administratrix of the Estate,
of VICTOR SIEMANOWICZ, AND LISA,
SIEMANOWICZ, Individually,**

**INDEX NO. 805246/2019
MOTION DATE
MOTION SEQ. NO. 2
MOTION CAL. NO.**

_Plaintiffs,

- against-

**PETER SCULCO, M.D., HOSPITAL FOR SPECIAL
SURGERY, ARTHUR YEE, M.D., JAMES
CALLOWAY, M.D., AND PATRICK LEE, M.D.,**

Defendants.

The following papers, numbered 1 to ____ were read on this motion for/to

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...
Answer – Affidavits – Exhibits _____
Replying Affidavits

PAPERS NUMBERED

█
█
█

Cross-Motion: Yes X No

Defendants Peter Sculco, M.D. (“Dr. Sculco”), Hospital for Special Surgery, and Arthur Yee, M.D. (“Dr. Yee”) (collectively, “Defendants”) move for an Order pursuant to Public Health Law 2805-m and Education Law 6527(3) precluding disclosure of personnel files or credentialing files maintained by the Defendants. Plaintiffs oppose.

Plaintiffs Lisa Siemanowicz, As Administratrix of the Estate of Victor Siemanowicz (“Decedent”), and Lisa Siemanowicz, Individually (collectively, “Plaintiffs”) bring this action for medical malpractice, lack of informed consent, wrongful death and loss of service. Plaintiffs commenced this action by filing the summons and complaint on July 31, 2019. Issue was joined by service of Answers for Defendants on September 12, 2017. Plaintiffs allege that Defendants failed to timely and properly treat Decedent which resulted in a stroke, brain damage, quadriplegia and death. Plaintiffs’ Verified Bills of Particulars include allegations that Hospital for Special Surgery negligently hired and retained Dr. Sculco and Dr. Yee.

On or about November 26, 2019, Plaintiffs served Plaintiffs' Demand for Discovery and Inspection which requested, *inter alia*:

7. Any and all personnel files of the Defendant doctors in the possession of Defendant hospital (only the documents that are not privileged or protected). See Simmons v. Northern Manhattan Nursing Home, Inc., 52 A.D.3d 352 (1st Dept. 2008); see also Orner v. Mount Sinai Hosp., 305 A.D.2d 307 (1st Dept. 2003); Van Caloen v. Poglinco, 214 A.D.2d 555 (1st Dept. 1995); LaForte v. Staten Island University Hospital, 2003 WL 21262389 at *4 (N.Y.Sup.2003));

7a. Any and all other documentation concerning any of the doctor defendant retention, application, for privileges or credentialing at defendant hospital...

On January 6, 2020, Defendants served a response to Plaintiffs' November 26, 2019 Demand for Discovery and Inspection. Defendants responded, *inter alia*:

11. Personnel files- The within request for the personnel files and/or all other documentation concerning the retention, application for privileges and/or credentialing of the within defendants is denied on the grounds that same are confidential, privileged and irrelevant to the matters at issue in this action.

On February 14, 2020, Defendants brought the motion to preclude disclosure of personnel files or credentialing files maintained by the Defendants. Plaintiff filed opposition on March 2, 2020. Defendants filed their reply on March 12, 2020.

Legal Standards

New York Education law excludes “the proceedings [and] the records relating to performance of a medical or a quality assurance review function or participation in a medical and dental malpractice prevention program [and] any report required by the department of health” from discovery. N.Y. Educ. Law § 6527(3).

“Public Health Law § 2805–j requires periodic review of a physician’s credentials and competence, and section 2805–k requires detailed information from

a physician in connection with granting and renewing professional privileges, all for the purpose of maintaining an active program to prevent malpractice.” *Logue v. Velez*, 92 N.Y.2d 13, 18 [1998]. “[A] hospital is required, at a minimum, to show it has a review procedure and that the information for which the exemption is claimed was obtained or maintained in accordance with that review procedure.” *Bamberg-Taylor v. Strauch*, No. 11179N, 2020 WL 1016343, at *1 [1st Dept 2020]. The First Department has held that the hospital has properly asserted the privilege through a detailed affidavit of a person with knowledge of the hospital’s credentialing and recertification process and maintenance of the records. *Logue*, 92 N.Y.2d at 18.

Discussion

Plaintiffs argue that Defendants waived their objections because “Defendants have not properly and timely asserted [the] information concerning credentialing and retention is privileged and not subject to disclosure.” However, Defendants have properly objected to Plaintiffs November 26, 2019 discovery demand pursuant to CPLR 3122. Defendants provided a complete response on January 6, 2020 denying the production of “personnel files and/or all other documentation concerning the retention, application for privileges and/or credentialing” of Defendants on the grounds that they are “confidential, privileged and irrelevant.”

Defendants raise privileges pursuant to Article 28 of the Public Health Law or Education Law § 6527(3). Defendants have provided the Affidavit of Alfred Pagan (“Mr. Pagan”), Senior Director of Medical Staff Services at Hospital for Special Surgery. Mr. Pagan states that Hospital for Special Surgery “has a processes for confirming the credentials of physicians on the medical staff, granting privileges to these physicians, and performing and continuing and periodic review of physicians’ qualifications and privileges.” (Mr. Pagan’s Affidavit at 1). Mr. Pagan states that Hospital for Special Surgery’s credentialing process are “established and conducted” pursuant to Public Health Law 2805-j and 2805-k. Mr. Pagan states that documentation is maintained by the Medical Staff Services office pursuant to Public Health Law 2805- j and 2805-k, and no other office or department at the Hospital for Special Surgery has access to the documents. Mr. Pagan states that the Credentialing Committee, Medical Board, and Board of Trustees have limited access to the documents:

[O]nly for the purpose of their deliberations on applications for privileges. Once a doctor’s request for privileges is either approved or denied through the process, the paper files created and generated through the

credentialing process are maintained by Medical Staff Services at an off-site location, and no other office or department has access to this information for any purpose.

(Mr. Pagan’s Affidavit at 4).

Furthermore, Mr. Pagan verifies that Dr. Sculco and Dr. Yee were granted privileges pursuant to Public Health Law 2805-j and 2805-k. Mr. Pagan states that Dr. Sculco was granted privileges in September 2015, and his privileges were reviewed and approved every two years through the re-credentialing process. Mr. Pagan states that Dr. Yee was granted privileges in June 1996, and his privileges were reviewed and approved every two years through the re-credentialing process.

Defendants have satisfied their burden of asserting privilege pursuant to Article 28 of the Public Health Law or Education Law § 6527(3). Defendants have demonstrated through Mr. Pagan’s Affidavit that Hospital for Special Surgery “has a review procedure” and that the documents were “obtained or maintained in accordance with that review procedure.” *Bamberg-Taylor v. Strauch*, No. 11179N, 2020 WL 1016343, at *1 [1st Dept 2020]. Therefore, credentialing files maintained by the Defendants are precluded from disclosure.

Wherefore it is hereby

ORDERED that Defendants’ motion is granted in its entirety.

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

Dated: May 29, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION