

Suriel v Wyckoff Hgts. Med. Ctr.

2020 NY Slip Op 32746(U)

August 21, 2020

Supreme Court, Kings County

Docket Number: 13734/2010

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

X

**J. SURIEL, an infant, by his father and natural
guardian, DAVID SURIEL,**

DECISION/ORDER

Plaintiff,

Index No. 13734/2010

-against-

Motion Seq. No. 011

Date Submitted: 08/21/2020

WYCKOFF HEIGHTS MEDICAL CENTER, et al.,

Defendants.

X

*Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant
Wyckoff's motion to quash*

Papers	NYSCEF Doc.
Notice of Motion, Affirmations, Affidavits and Exhibits Annexed.....	<u>2-25</u>
Affirmation in Opposition, Affidavits and Exhibits Annexed.....	<u>26-28</u>
Reply Affirmation.....	<u>29</u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

In this medical malpractice action, defendant Wyckoff Heights Medical Center ("hospital") moves to quash the trial subpoenas dated 5/15/20 and 6/3/20 served by plaintiff. The motion is granted in part and denied in part, after oral argument, as follows.

The first item requested, contained in the May 15, 2020 subpoena, is "ALL CODE SHEETS PERTAINING TO J. SURIEL IN CONNECTION WITH HIS ACUTE CARDIORESPIRATORY ARREST OCCURRING ON 02/01/2005, AS MAINTAINED BY YOU, YOUR AGENTS, AND/OR YOUR EMPLOYEES." Counsel for movant claims that in 2005, this item, a "Code Blue" sheet, was not used in the neonatal intensive care unit at the hospital. He also represented that none of the witnesses deposed were asked about this,

so there is nothing in the lengthy EBT testimony to support his position. Counsel must therefore, provide an affidavit from someone with personal knowledge that they were not used in 2005, so they cannot be provided.

The second and third items requested, in the June 3, 2020 subpoena, are “COPIES OF THE MEDICAL BY-LAWS AND INTERNAL POLICIES, RULES, REGULATIONS, GUIDELINES, PROTOCOLS, AND PROCEDURES OF WYCKOFF HEIGHTS MEDICAL CENTER THAT PERTAIN TO DOCUMENTATION REQUIRED IN THE NICU, IN EFFECT IN JANUARY AND FEBRUARY 2005. COPIES OF THE MEDICAL BY-LAWS AND INTERNAL POLICIES, RULES, REGULATIONS, GUIDELINES, PROTOCOLS, AND PROCEDURES OF WYCKOFF HEIGHTS MEDICAL CENTER THAT PERTAIN TO DOCUMENTATION REQUIRED WHEN THERE IS A CARDIAC ARREST IN AN INFANT, IN EFFECT IN JANUARY AND FEBRUARY 2005.”

The New York Public Health Law provides in several sections, including but not limited to § 2803-J, that the Commissioner of Health may promulgate regulations with regard to the operation of hospitals. One of the sections applicable to the instant request is 10 NYCRR § 405.21 Perinatal Services, which, in relevant part provides:

(a) Applicability. This section shall apply to all general hospitals having maternity and newborn services and providing pregnancy-related care for women who are pregnant at any stage, parturient or within six weeks from delivery and for infants 28 days of age or less or, regardless of age, who are less than 2,500 grams (5 1/2 pounds).

(b) Definitions. For the purposes of this section:

(1) Perinatal services shall mean those services provided in a particular hospital where, as a regular practice, maternity patients and newborn infants receive care on a continuum ranging from preconception services to care during all stages of pregnancy, parturition, postpartum and neonatal care.

(11) Neonatal intensive care unit (NICU) shall mean a room at Level II, Level III and Regional Perinatal Center perinatal care services for housing newborns including premature infants and

low birth weight infants, who require specialized care and who are not suspected of nor diagnosed as having any communicable condition.

(c) General requirements.

(1) Hospitals providing perinatal services shall provide such services in accordance with current standards of professional practice. Written policies and procedures shall be developed and implemented which address the following:

(iv) protocols and resources available to stabilize and assess newborns for their need of neonatal intensive care; and

(v) the daily care of maternity patients and infants in the perinatal service.

(ii) Newborns requiring specialized care shall be placed in a NICU and hospitals shall develop and implement protocols for all phases of treatment of such newborns. Newborns who are delivered in perinatal care services that are not capable of providing all necessary care and services shall be transferred to perinatal care services at hospitals that can meet the newborns' needs.

The court finds that the subpoena seeks the “written policies and procedures” as are required by this regulation, underlined by the court above, and that to the extent such is required by New York State law, rules and/or regulations, the branch of the motion which seeks to quash the subpoena is denied. The court also notes that this regulation was in effect in 2005.

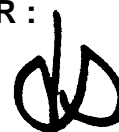
The last item requested by plaintiff is “ALL NICU FLOW SHEETS PERTAINING TO J. SURIEL AS MAINTAINED BY YOU, YOUR AGENTS, AND/OR YOUR EMPLOYEES.” At oral argument, movant’s counsel claims that the flow sheets contained in Exhibit U to the motion are the only ones in the patient’s chart, and that counsel has the original chart in his law office. Plaintiff’s attorney responded that the one at Page 54 of the exhibit is partially cut off and has no date. The hospital’s counsel shall provide plaintiff’s counsel with a better copy of the page, if possible. In addition, defendant hospital may not offer any additional

pages of flow sheets into evidence other than the ones in Exhibit U (E-file Doc. 25), due to the representation that there were no other pages created during the patient's hospital stay.

This constitutes the decision and order of the court.

Dated: August 21, 2020

ENTER:

A handwritten signature in black ink, appearing to be 'DS' or similar initials, written over a horizontal line.

Hon. Debra Silber, J.S.C.