

<b>Winslow v New York-Presbyt. Weill-Cornell Med. Ctr.</b>
2021 NY Slip Op 31863(U)
June 2, 2021
Supreme Court, New York County
Docket Number: 100348/2020
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

JONATHAN PATRICK WINSLOW,

INDEX NO. 100348/2020

MOTION DATE

MOTION SEQ. NO. 3

MOTION CAL. NO.

Plaintiff,

- against -

Decision and Order

NEW YORK-PRESBYTERIAN WEILL-CORNELL MEDICAL CENTER, SHEYLA REYES, DR DAVID BRDA, MD, DR BENJAMIN BRINTON, MD, DR THOMAS HENRY FINCH, MD, DR DAVID HANKINS, MD, DR DARLENE MARY MITERA, MD, NEW YORK-PRESBYTERIAN/PAYNE WHITNEY PSYCHIATRIC CLINIC, DR KATHERINE GOETTSCHKE, MD, DR DAPHNE LOUBRIEL, MD, PATRICIA MURPHY,

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

Cross-Motion: X Yes No

PAPERS NUMBERED

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Pro Se Plaintiff Jonathan Patrick Winslow (“Plaintiff”) moves by Order to Show Cause seeking:

[M]edical authorizations, ordered by this same Court on March 31, 2021 (and entered on Apr. 1, 2021) to be executed and proffered by the Plaintiff to the Defendants, having been filed electronically as “Document 44” under “Motion 001” in NYSCEF, as per the recommendation of the Clerk of this Court under “Exhibit(s)-Request to Seal”, should not be BOTH SEALED AND RETAINED by this Court in satisfaction of the terms granting and permitting automatic stay of related order<sup>1</sup>, as per CPLR 5519(a)(5),

<sup>1</sup> On March 31, 2021, this Court issued an Order and Decision which Ordered, *inter alia*: “that Plaintiff’s cross-motion is denied, and Plaintiff shall provide HIPAA-compliant authorizations for NYU Hospital, Bellevue, Montefiore Medical Center, internist Oliver Pacifico, M.D, family practice physician, Halyin Hua, M.D., and Plaintiff’s collateral

pending appeal, of which notice has been served upon the parties, and further

[D]efendants should not have access to view or obtain these authorizations RESTRICTED, pending current appeal, notice of which has been served upon the parties, and pending an outcome of appeal favorable to same Defendants, as pursuant to the terms of automatic stay as per CPLR 5519, and granting such other and further relief as the Court may deem just and equitable.

Defendants New York-Presbyterian Weill-Cornell Medical Center, Sheyla Reyes, Dr David Brda, MD, Dr Benjamin Brinton, MD, Dr Thomas Henry Finch, MD, Dr David Hankins, MD, Dr Darlene Mary Mitera, MD, New York-Presbyterian/Payne Whitney Psychiatric Clinic, Dr Katherine Goettsche, MD, Dr Daphne Loubriel, MD, and Patricia Murphy (collectively, “Defendants”) cross-move seeking the Court pursuant to CPLR § 5519(c) vacating the automatic stay pursuant to CPLR 5519(a)(5); and, directing Plaintiff to provide the seven medical authorizations pursuant to Judge Rakower’s Order dated April 1, 2021.

#### Legal Standards

“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].

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source providers (including Empire, BC Healthplus and Amerigroup Medicaid) for the five years prior to September 12, 2017 to the present...”

The sealing of court records is governed by 22 NYCRR § 216.1, which provides as follows:

(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

“[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.” *Maxim, Inc. v. Feifer*, 145 AD3d 516, 517 [1st Dept 2016]. For instance, a compelling objective is “when the need for secrecy outweighs the public's right to access, e.g., in the case of trade secrets.” *In re East 51st Street Crane Collapse Litigation*, 106 AD3d 473, 474 [1st Dept 2013]. “The rule also requires courts to consider the interests of the public as well as the parties in determining whether good cause has been showing.” *Id.* “[A] finding of good cause ... ‘boils down to ... the prudent exercise of the court's discretion.’” *Applehead Pictures LLC v. Pereleman*, 80 AD3d 181, 192 [1st Dept 2010]. “[N]either the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” *Mosallem v. Berenson*, 76 A.D.3d 345, 351 [1st Dept 2010]. However, courts have also held that sealing is warranted where the issues raised were “of minimal public interest.” *Feffer v. Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc. 2d 812, 815-16 [Sup. Ct., N.Y. County 1991]. Even if the parties stipulate to sealing an action, the motion court should still make its own written finding of good cause. *Maxim, Inc.*, 145 AD3d at 517.

CPLR 5519(c) states that “[t]he court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal...” “[C]ourts have the inherent power, and indeed responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them.” *Matter of Grisi v. Shainswit*, 119 AD2d 418, 421 [1st Dept. 1986]. “[T]he granting of stays pending appeal in such cases is, for the most part, a matter of discretion.” *Id.*

Discussion

Plaintiff has failed to establish the requisite good cause to warrant the sealing of the “authorizations.” Plaintiff has “voluntarily presented a picture of his... medical condition to the court... 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*, 194 A.D.2d at 45–46. Plaintiff argues that “[m]edical records are normally privileged; the privilege, furthermore, belongs to the patient.” However, “neither the potential for embarrassment or damage to reputation, nor the general desire for privacy, constitutes good cause to seal court records.” *Mosallem*, 76 A.D.3d at 351. Therefore, Plaintiff has not demonstrated a right to seal the requested information.

Additionally, the Court finds that there is no basis for granting a stay under CPLR 5519(c). “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.*, 60 N.Y.2d at 456–457 [citations and footnote omitted]. Since the filing of the Summons and Verified Complaint on July 20, 2020, the parties have not engaged in discovery. Defendants assert that the authorizations are necessary “to assess the veracity of plaintiff’s claims or evaluate potential damages.” Moreover, Plaintiff has failed to demonstrate how he would be prejudiced by providing Defendants with the authorizations.

Wherefore it is hereby,

ORDERED that Plaintiff’s motion to seal is denied; and it is further

ORDERED that Defendants’ cross motion is granted.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: June 2, 2021

  
EILEEN A. RAKOWER, J.S.C.

Check one:    FINAL DISPOSITION     NON-FINAL DISPOSITION