

**Public Adm'r of Bronx County v New York City
Health & Hosps. Corp.**

2022 NY Slip Op 33484(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 452724/2021

Judge: Erika M. Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS PART 10M

Justice

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PUBLIC ADMINISTRATOR OF BRONX COUNTY, AS
ADMINISTRATOR OF THE ESTATE OF WILLIE STACY,
DECEASED, and NAKIA BOYD, individually,

Plaintiffs,

- v -

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Defendant.

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INDEX NO. 452724/2021

MOTION DATE 06/14/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 78, 79, 80, 81

were read on this motion to/for STRIKE PLEADINGS and CROSS-MOTION TO COMPEL

Upon the foregoing documents, for the reasons set forth on the record during oral argument held before this court on October 14, 2022, the court grants in part Defendant New York City Health and Hospitals Corporation's ("NYCHHC") motion filed under motion sequence 001, to the extent set forth below and the court denies Plaintiff Public Administrator of Bronx County, as Administrator of the Estate of Willie Stacy, Deceased's, and Nakia Boyd, individually's ("Plaintiffs") cross-motion to compel.

Defendant NYCHHC now moves under motion sequence 001 to strike portions of Plaintiffs' Supplemental Verified Bill of Particulars which allege causes of action sounding in intentional and fraudulent actions which were not alleged in Plaintiffs' Complaint or Notice of Claim, striking portions of Plaintiffs' Supplemental Verified Bill of Particulars which allege violations of regulations which apply to residential care facilities and compelling Plaintiffs to provide authorizations for pertinent medical providers.

Plaintiff cross-moves to compel Defendant to provide responses to Plaintiffs' Combined Discovery Demands and Demand for Witness Identification, dated October 23, 2019.

Subsequent to the filing of these motions, Plaintiffs withdrew their Supplemental Bill of Particulars, filed a Second and Third Supplemental Bill of Particulars, withdrew the language in their Bill of Particulars alleging intentional or fraudulent conduct regarding the nurses' entries in the Decedent's medical records, withdrew their claims regarding violations pertaining to residential care facilities and provided additional discovery. Defendants also provided additional discovery. The parties oppose the remainder of the opposing parties' motions.

As discussed on the record, the court grants Defendant's motion in part to the extent provided below and denies Plaintiffs' cross-motion as set forth below.

The court has considered any additional arguments raised by the parties, not specifically addressed on the record or herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Defendant New York City Health and Hospitals Corporation's motion filed under motion sequence 001, to the extent that:

- 1) To the extent not already withdrawn by Plaintiffs, the court grants the portion of Defendant's motion seeking an order precluding Plaintiffs from including allegations in their Supplemental Bill of Particulars, or in any subsequent Supplemental Bill of Particulars, which were not previously alleged in their Complaint or Notice of Claim, including, but not necessarily limited to:
 - a. allegations of intentional or fraudulent conduct related to nurses intentionally making false or inaccurate entries in the Decedent's medical records which

were motivated by efforts to avoid Medicaid or Medicare reimbursement rules, however the court denies Defendants' request to preclude Plaintiffs from introducing evidence at trial about the motives for nurses making incorrect or inconsistent entries in the Decedent's medical records, as such ruling would be premature; and

- b. allegations of failure to properly treat Decedent's diarrhea, influenza A, ESBL and pneumonia;
- 2) To the extent not already withdrawn by Plaintiffs, the court grants the portion of Defendant's motion seeking an order striking the portions of the Plaintiffs' Supplemental Bill of Particulars, or any subsequent Supplemental Bill of Particulars, which allege violations of regulations which apply to residential care facilities, including, but not necessarily limited to, Public Health Law 2801-d, 2803-c and 2903-c, 10 NYCRR 415.3, and 42 CFR 483.20, 483.25 and 483.40; and
- 3) The court denies the portion of Defendants' motion seeking an order compelling Plaintiffs to provide authorizations for pertinent medical providers, as Plaintiffs have provided some authorizations, they have agreed to provide additional authorization(s) and the court is satisfied with the Decedent's daughter, Plaintiff Nakia Boyd's, affidavit stating in substance that she is unaware of the names of the physicians to respond further to Defendant's Demand; and it is further

ORDERED that the court denies as moot Plaintiffs cross-motion to compel Defendant to provide responses to Plaintiffs' Combined Discovery Demands and Demand for Witness Identification, dated October 23, 2019, as such responses were previously provided, the court is

