

Matter of Marte v New York Presbyt.-Columbia Univ.

2023 NY Slip Op 30824(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 805334/2022

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART **56M**

Justice

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INDEX NO. 805334/2022
MOTION DATE 11/21/2022
MOTION SEQ. NO. 001

In the Matter of

MARIA MARTE,

Petitioner,

- v -

NEW YORK PRESBYTERIAN-COLUMBIA UNIVERSITY
IRVING MEDICAL CENTER,

Respondent.

**DECISION, ORDER, and
JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for DISCOVERY - PRE-ACTION.

In this proceeding pursuant to CPLR 3102(c), the petitioner seeks pre-action disclosure of certified copies of the complete medical chart referable to her obstetrical and gynecological treatment at the respondent's facilities from January 1, 2020 to present, including treatment thereat by Joshua Holden, M.D. The respondent has not answered or opposed the petition. The petition is granted, and the respondent is directed to provide the petitioner with certified copies of any such records or charts in accordance herewith.

The petitioner established that she made at least four requests for the production of all of her medical records, but that, to date, she only has received fetal monitoring strips and records related to her pre-natal care at the respondent's facility. In response to several of the requests, she received irrelevant records from a medical practice related to the respondents, inaccessible password-protected computer files, and incorrect and improper on-line files.

CPLR 3102(c) authorizes a court to permit a party to conduct pre-action disclosure to aid in framing a complaint "and identifying prospective defendants" (*Matter of Sims v Metropolitan Transp. Auth.*, 123 AD3d 496, 496 [1st Dept 2014]; see *Matter of Walker v Sandberg & Sikorski*

Corp. Firestone, Inc., 102 AD3d 415, 415 [1st Dept 2013]; *Matter of Champion v Metropolitan Tr. Auth.*, 70 AD3d 587, 588 [1st Dept 2010]). A petitioner seeking leave to conduct pre-action disclosure must demonstrate that he or she has a potentially viable cause of action against some person or entity, and that the disclosure sought is material and necessary to proof of an actionable wrong (see *Matter of Woodbridge Structured Funding, LLC v Pissed Consumer*, 125 AD3d 508, 508-509 [1st Dept 2015]; *Matter of Peters v Sotheby's, Inc.*, 34 AD3d 29, 34 [1st Dept 2006]; *Matter of Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept 1989]). The resort to pre-action disclosure, however, "is not permissible as a fishing expedition to ascertain whether a cause of action exists" in the first instance (*Matter of Liberty Imports v Bourguet*, 146 AD2d at 536).

"Under New York law, patients and those similarly situated have generally been entitled to court orders granting them access to their medical records for purposes of litigation. This is obviously true in instances in which litigation has actually been commenced . . . and it is even true when litigation is merely contemplated" (*Wheeler v Commissioner of Soc. Servs.*, 233 AD2d 4, 9 [2d Dept 1997] [citations omitted]; see *Matter of Cummings v Perkins*, 2022 NY Slip Op 31047[U], *2, 2022 NY Misc LEXIS 1600, *2 [Sup Ct, N.Y. County, Mar. 30, 2022] [Kelley, J.]; *Matter of Kaplan v North Shore Univ. Hosp.*, 117 Misc 2d 734, 736 [Sup Ct, Nassau County 1982]). Moreover, Public Health Law § 18(2)(d) provides that "upon the written request of any qualified person, a health care provider shall furnish to such person, within a reasonable time, a copy of any patient information requested . . . which the person is authorized to inspect pursuant to this subdivision." That statutory provision entitles either the petitioner or her attorney to obtain her medical chart and records from the respondent.

The petitioner has made the requisite showing that she has potentially viable causes of action against the respondent sounding in medical malpractice, premised upon departures from good medical practice in overseeing the birth of the petitioner's child. The respondent, moreover, has not established that it does not maintain any relevant records concerning the

subject treatment and childbirth, or that the petitioner would be unable to maintain an action against it in connection with the manner in which it monitored the petitioner prenatally, during childbirth, and immediately thereafter. The court notes that, in the context of a proceeding pursuant to CPLR 3102(c), there is no requirement that a petitioner whose potential action sounds in medical malpractice must support the petition with an expert affirmation or affidavit to establish the merit of the claim (*see Matter of Toal v Staten Is. Univ. Hosp.*, 300 AD2d 592, 592 [2d Dept 2002] [granting CPLR 3102(c) petition of potential medical malpractice plaintiff over a dissent that argued that expert affirmation was required to establish merit of claim]; *but see Matter of Accetta v Brookdale Univ. Med. Ctr.*, 2013 NY Slip Op 50657[U], 39 Misc 3d 1218[A] [Sup Ct, Kings County, Apr. 26, 2013] [holding that expert affirmation was required]).

In light of the foregoing, it is

ADJUDGED that the petition is granted; and it is,

ORDERED that, within 15 days of the entry of this Decision, Order, and Judgment, the petitioner shall serve a copy of this Decision, Order, and Judgment, with notice of entry, upon the respondent by uploading it to the New York State Court Electronic Filing System *and* by sending it by first-class mail to the respondent's principal office address; and it is further,

ORDERED that, within 30 days of service upon each of them of a copy of this Decision, Order, and Judgment, with notice of entry, as described above, the respondent shall provide the petitioner's attorney with a certified copy of the entirety of the petitioner's medical records and chart referable to the prenatal, gynecological, and obstetrical care provided to her, and any records related to fetal health and the health of her child during and after childbirth, including, but not limited to, patient registration, operative notes, operative procedure report, anesthesia administration record, medication administration record, pre- and post-delivery notes, history and physical examination notes, nursing notes, diagnostic testing results, discharge notes, medication prescriptions, and any photographs made a part of the medical chart or records, or, if applicable, an affidavit from a person with knowledge that such records do not exist, or could

not be located after a diligent search, provided that any search methods must be described in detail.

This constitutes the Decision, Order, and Judgment of the court.

3/14/2023
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE