

Rosenberg v Glickman
2023 NY Slip Op 32461(U)
July 17, 2023
Supreme Court, New York County
Docket Number: Index No. 800036/2011
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. JOHN J. KELLEY</u> <i>Justice</i> -----X JENNIFER ROSENBERG, Plaintiff, - v - ROBERT S GLICKMAN, D.M.D., Defendant. -----X	PART 56M INDEX NO. <u>800036/2011</u> MOTION DATE <u>05/052023</u> MOTION SEQ. NO. <u>005</u> DECISION + ORDER ON MOTION
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The following e-filed documents, listed by NYSCEF document number (Motion 005) 6, 7, 8, 9, 10, 11, 12, 18, 19, 20, 26, 27, 28, 29, 30, 31, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for

COMPEL

In this action to recover damages for dental malpractice, the plaintiff moves, among other things, pursuant to CPLR 3124 to compel the defendant to provide her with copies of all of her dental records that he had obtained in the course of discovery, identify what records or items of information that the defendant claimed she had yet to provide, and disclose whether her controlled unclassified information is stored in his attorney's legal software known as Relativity. She also moves pursuant to CPLR 3103 to prohibit the defendant's counsel from sharing her medical records with unrelated third parties and to revoke the authorizations that she had previously provided to Robyn S. Goldfarb, an attorney with the defendant's counsel, Rawle & Henderson, LLP. The defendant opposes the motion. The motion is denied.

In the first instance, although the plaintiff provided the defendant with only seven days' notice of the submission of this motion, rather than the statutorily required eight days' notice (see CPLR 2214[b]), the court initially adjourned the return date of the motion until March 13, 2023, so that the defendant would have sufficient time to submit opposition papers. Hence, the

defendant ultimately was provided with sufficient notice, and the court will address the motion on the merits.

While CPLR 3101 provides for full disclosure of documentation and information that are material and necessary to the litigation of an action, or is likely to lead to the discovery of admissible evidence (see *Vargas v Lee*, 170 AD3d 1073 [2d Dept 2019]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [2d Dept 2010]; *Anonymous v High School for Env'tl. Studies*, 32 AD3d 353, 358 [1st Dept 2006]), the plaintiff failed to establish that any of the information that she currently seeks from the defendant falls within those categories. No duty is imposed upon a defendant to provide a plaintiff with a duplicate copy of the medical or dental records of a plaintiff's treating and examining health-care providers that had been obtained via authorizations (see *Badach v Caggiano*, 255 AD2d 919, 919 [4th Dept 1998]; *Hualde v Otis Elevator Co.*, 235 AD3d 269, 269 [1st Dept 1997]; *Tower v Chemical Bank*, 140 AD2d 514, 515-516 [2d Dept 1988]; see also *Casey v Tan*, 255 AD2d 900, 901 [4th Dept 1988]). Moreover, the plaintiff has not demonstrated that she is entitled to discovery of the format in which the defendant's counsel maintains her dental records in their litigation file or on a cloud server, or printouts thereof that would reveal the format. Hence, that branch of her motion seeking to compel the defendant to produce documentation and other information must be denied.

"[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 NY2d 452, 456-457 [1983] [citation omitted]). A plaintiff in a personal injury or malpractice action generally has a continuing obligation to provide the defendant with updated authorizations referable to ongoing medical or dental treatment (see generally *Zakhidov v Boulevard Tenants Corp.* 96 AD3d 737, 738 [2d Dept 2012]; *Dehaney v New York City Trans. Auth.*, 180 Misc 2d 695, 698-699 [Sup Ct, Bronx County 1997]; CPLR 3101[h]). Moreover, such a plaintiff must provide

authorizations containing information sufficient for the defendant and relevant health-care providers to process them, and those authorization must not be excessively restricted as to date or subject matter so as to prevent the defendant from obtaining information relevant to the plaintiff's claims (see *DeFelice v Seakco Constr. Co., LLC*, 2014 NY Slip Op 33882[U], *8-9, 2014 NY Misc LEXIS 6341, *18-19 [Sup Ct, Westchester County, Feb. 25, 2014]). Nonetheless, with respect to the plaintiff's request that the defendant identify what information was "missing" from her prior authorizations, that issue has been rendered academic, inasmuch as the defendant has indicated in his opposition papers that, "[a]t this time, the attorneys for Defendant are not seeking any further authorizations or medical records from Plaintiff."

There is no basis for the plaintiff's request to prohibit the defendant from sharing her medical and dental records with all persons or entities who are not parties to this action. While the defendant is under an obligation not to disclose those records to persons who are completely uninvolved in this litigation, he certainly has the right to ask those dental and medical experts who he may wish to retain and testify on his behalf in this case to review those records. Moreover, the defendant is represented by a law firm, not just individual attorneys within that firm. Hence, the plaintiff evinces a serious misunderstanding as to how a firm represents a client in the course of litigation, as numerous attorneys in a firm frequently work on, and appear in court with respect to, any particular case. Additionally, a law firm also employs paralegals, secretaries, and other support personnel who, of necessity, will be required to review relevant medical and dental records. It would be absurd for the court to "revoke" the authorizations that the plaintiff already has provided to one attorney at Rawle & Henderson, LLP, merely because other attorneys appeared at various conferences instead of that attorney. It would also be completely unheard of for a court to restrict a law firm's personnel from discharging their duties in reviewing dental and medical records so that they can be properly categorized, sorted, labeled, reviewed, and summarized.

The plaintiff's remaining contentions are without merit.

Inasmuch as the court held in abeyance the scheduling of a new note of issue filing deadline until the disposition of this motion, the court extends that filing deadline until August 31, 2023.

Accordingly, it is

ORDERED that the plaintiff's motion is denied; and it is further,

ORDERED that, on the court's own motion, the note of issue filing deadline is extended until August 31, 2023.

This constitutes the Decision and Order of the court.

7/17/2023

DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

☒

DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE