

Flanders v Boachie-Adjei

2025 NY Slip Op 30817(U)

March 7, 2025

Supreme Court, New York County

Docket Number: Index No. 805437/2014

Judge: John J. Kelley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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BETHANY FLANDERS,

Plaintiff,

- v -

OHENEBA BOACHIE-ADJEI, M.D., MATTHEW CUNNINGHAM, M.D., PH.D., VICTOR ZAYAS, M.D., EAST RIVER MEDICAL ANESTHESIOLOGY, P.C., ROBBYN SOCKOLOW, M.D., MARY F. DIMAIO, M.D., MARY F. DIMAIO, M.D., P.C., HYUN SUSAN CHA, M.D., STEPHANIE PERLMAN, M.D., SEENA ABRAHAM, M.B., B.S., PEDIATRIC CARDIOLOGY OF ROCKLAND PLLC, SUSHMA REDDY, M.D., SHEILA J. CARROLL, M.D., LEONARDO LIBERMAN, M.D., MARTHA KUTKO, M.D., DEYIN DOREEN HSING, M.D., STEVEN PON, M.D., LAWRENCE SIEW, M.D., THE NEW YORK SOCIETY FOR THE RELIEF OF THE RUPTURED AND CRIPPLED, MAINTAINING THE HOSPITAL FOR SPECIAL SURGERY, doing business as HOSPITAL FOR SPECIAL SURGERY, HOSPITAL FOR SPECIAL SURGERY PHO, INC., THE NEW YORK AND PRESBYTERIAN HOSPITAL, also known as NEW YORK-PRESBYTERIAN HOSPITAL, WEILL CORNELL PHYSICIANS, and WEILL CORNELL MEDICAL COLLEGE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 435, 475, 479

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 432, 436, 439, 440, 441, 442, 443, 444, 472, 473, 474, 476, 480

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 433, 437, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 477, 481

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 006) 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 434, 438, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 471, 478, 482

DECISION + ORDER ON MOTION

were read on this motion to/for ORDER OF PROTECTION.

This is an action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and negligent retention of health-care personnel.

Under MOTION SEQUENCE 003, the plaintiff moves pursuant to CPLR 3124 to compel the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, and Hospital for Special Surgery, PHO, Inc. (together HSS), to produce their Director of Risk Management, Joanne Meila, for a deposition or, in the alternative, pursuant to CPLR 3126 to strike the HSS's answer for their failure to produce Melia for a deposition. HSS opposes the motion. HSS cross-moves pursuant to CPLR 3103 for a protective order precluding the plaintiff from conducting Melia's deposition, and pursuant to 22 NYCRR part 130 for the imposition of sanctions upon the plaintiff in connection with her attempts to depose Melia. The plaintiff's motion under SEQUENCE 003 is granted only to the extent that HSS is directed to produce Melia for a deposition on or before April 24, 2025, which shall be limited to two hours, and shall be limited to the issues surrounding communications between Melia and the defendant Oheneba Boachie-Adjei, M.D., concerning the risk of taking on the plaintiff as a patient at HSS and the risk of transferring her from another hospital to HSS for treatment. That motion is otherwise denied. HSS's cross motion under SEQUENCE 003 is denied.

Under MOTION SEQUENCE 004, the plaintiff moves pursuant to CPLR 3124 to compel HSS and the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College (collectively the institutional NYPH defendants) to comply with this court's December 6, 2023, March 7, 2024, and June 20, 2024 discovery conference orders and to respond to her October 30, 2023 notice for discovery and inspection or, in the alternative, pursuant to CPLR 3216 to strike their answer for failure to comply with those orders or respond to that notice. The plaintiff also moves

pursuant to CPLR 3123 to have the court deem, as admitted, her requests for admission, as set forth in her May 22, 2024 notice to admit, and pursuant to CPLR 3116 striking the errata sheet submitted by the defendant Deyin Doreen Hsing, M.D., in connection with the transcript of her March 28, 2024 deposition testimony. The institutional NYPH defendants, HSS, and Hsing oppose those branches of the motion seeking relief insofar as sought against each of them. The plaintiff's motion under SEQUENCE 004 is granted only to the extent that, on or before April 30, 2025, HSS and the institutional NYPH defendants shall respond to the plaintiff's October 30, 2023 notice of discovery and inspection, except to the extent that she requested production of documents specifically referable to patients other than herself, as explained in more detail below, and the plaintiff's motion under SEQUENCE 004 is otherwise denied.

Under MOTION SEQUENCE 005, HSS and the defendants Boachie-Adjei, Victor Zayas, M.D., East River Medical Anesthesiology, P.C., Hyun Susan Cha, M.D., and Stephanie Perlman, M.D. (collectively the HSS defendants), move pursuant to CPLR 3025(b), 3042(b), and 3043(b)(a) to strike or preclude all claims set forth in the plaintiff's second "supplemental" bill of particulars as to them, dated September 17, 2024, beginning on page 4, line 24, with the words "in abandoning" and ending on page 5, line 7, with the word "trainees," to strike or preclude all claims set forth in her third "supplemental" bill of particulars as to Boachie-Adjei, also dated September 17, 2024, beginning on page 4, line 28, with the words "in abandoning," and ending on page 5, line 6, with the word "surgery," and to strike or preclude all claims set forth in the plaintiff's fourth "supplemental" bill of particulars as to Zayas and East River, also dated September 17, 2024, beginning on page 4, line 29, with the words "in abandoning" and ending on page 5, line 6, and ending with the word "surgery." The HSS defendants also move pursuant to CPLR 3103 for a protective order relieving them of the obligation of having to respond of to the plaintiff's October 30, 2023 and August 9, 2024 notices for discovery and inspection. The plaintiff opposes the motion, and cross-moves pursuant to CPLR 3025(b) and 3042(b) for leave to deem the subject bills of particulars to have been served nunc pro tunc.

The plaintiff's cross motion under SEQUENCE 005 is granted. That branch of the motion of the HSS defendants' motion under that same sequence number is granted only to the extent that they are granted a protective order relieving them of the obligation to produce documents specifically referable to patients other than the plaintiff, as more fully explained below, the motion is otherwise denied, and, on or before April 30, 2025, they are directed to respond to the remaining requests in the plaintiff's October 30, 2023 and August 9, 2024 notices for discovery and inspection, as also more fully set forth below.

Under MOTION SEQUENCE 006, the institutional NYPH defendants, Hsing, and the defendants Robbyn Sockolow, M.D., Sushima Reddy, M.D., Sheila Carroll, M.D., Leonardo Lieberman, M.D., Martha Kutko, M.D., Steven Pon, M.D., and Lawrence Siew, M.D. (collectively the NYPH defendants), move pursuant to CPLR 3103 for a protective order striking the plaintiff's May 22, 2024 notice to admit, quashing so-ordered nonparty deposition subpoenas addressed to former NYPH employees Alison Shuman, M.D., and Jaclyn Davis, M.D., and precluding the plaintiff from deposing those persons or any other witnesses on behalf of the NYPH defendants. They also move pursuant to CPLR 3025(b), 3042(b), and 3043(b)(a) to strike the plaintiff's "supplemental" bills of particulars as to them. The plaintiff opposes the motion, and cross-moves pursuant to CPLR 3025(b) and 3042(b) for leave to deem the subject bills of particulars to have been served nunc pro tunc. The plaintiff's cross motion under SEQUENCE 006 is granted, and the motion of the NYPH defendants under that motion sequence is granted only to the extent that they are granted a protective order striking the plaintiff's May 22, 2024 notice to admit. The NYPH defendants' motion is otherwise denied.

SEQUENCE 003

CPLR 3101(a) calls for "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 407 [1968] [internal quotation marks omitted]). Evidence is material if sought "in good faith for possible use as evidence-in-chief or rebuttal or for cross-examination"

(*id.*). The standard for determining whether information or documentation sought during discovery must be disclosed or produced is whether “the request is reasonably calculated to yield information that is ‘material and necessary’—i.e., relevant” (*Forman v Henkin*, 30 NY3d 656, 661 [2018]) or whether such information or documentation “is likely to *lead to* relevant information” (*Cioffi v S.M. Foods, Inc.*, 178 AD3d 1003, 1006 [2d Dept 2019] [emphasis added]; see *Vargas v Lee*, 170 AD3d 1073, 1077 [2d Dept 2019]; *Milligan v Bifulco*, 153 AD3d 1624, 1625 [4th Dept 2017]; *Polygram Holding, Inc. v Cafaro*, 42 AD3d 339, 341 [1st Dept 2007] *Sexter v Kimmelman*, 277 AD2d 186, 187 [1st Dept 2000]; *Fell v Presbyterian Hosp. in City of N.Y. at Columbia-Presbyt. Med. Ctr.*, 98 AD2d 624, 625 [1st Dept 1983]).

On March 25, 2007, the parents of the plaintiff, who then was still under 18 years of age, wrote to Boachie-Adjei, requesting that he treat her for serious thoracic spine conditions, possibly employing a hybrid vertical expandable prosthetic titanium rib (VEPTR), and inquired as to transferring the plaintiff from the Shriners’s Hospital in Salt Lake City, Utah, to HSS in New York. Sarah Griffin, who was Boachie-Adjei’s administrative assistant, forwarded the correspondence to HSS’s risk management office. Boachie-Adjei thereafter discussed the plaintiff’s case with Joanne Melia, who was HSS’s risk management director, and, after the discussion, he directed his assistant to inscribe, on a printout of the forwarded email and correspondence, a summary of that discussion. His assistant thus wrote the following: “Joanne Melia: “in the ‘best’ interest of the patient, tx too risky. Has exc. are there. Happy to confer by telephone [with] doctors. Remain at Shriners.” Boachie-Adjei testified at his deposition that he made both that initial assessment and all further risk assessments of the plaintiff, that Melia did not contribute the those assessments, and that the abbreviation “tx” referred to the transfer of the plaintiff, and not to treatment or any other issue.

Nonetheless, the court concludes that a short deposition of Melia either to corroborate that testimony, or to clarify or otherwise explain her role in the risk assessment process, is warranted. Hence, that branch of the plaintiff’s motion seeking to compel HSS to produce Meila

for a deposition is granted to the extent that they shall produce her for such a deposition on or before April 24, 2025. The deposition shall be limited to two hours, and shall further be limited to the issues surrounding communications between Melia and Boachie-Adjei concerning the risk of taking on the plaintiff as a patient at HSS and the risk of transferring her from another hospital to HSS for treatment.

The court denies that branch of the plaintiff's motion seeking to strike HSS's answer for their failure to produce Melia for a deposition. CPLR 3126 authorizes the court to sanction only a party who "refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed" (*Kutner v Feiden, Dweck & Sladkus*, 223 AD2d 488, 489 [1st Dept 1998] [emphasis added]). A party's failure to satisfy its discovery obligations, particularly after a series of court orders has been issued, "may constitute the dilatory and obstructive, and thus contumacious, conduct" (*id.* at 489; see *CDR Creances S.A. v Cohen*, 104 AD3d 17 [1st Dept 2012]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004]). "[T]he drastic remedy of striking an answer is not appropriate where there is no clear showing that the failure to comply with discovery demands was willful or contumacious" (*Walter B. Melvin, Architects, LLC v 24 Aqueduct Lane Condominium*, 51 AD3d 784, 785 [2d Dept 2008]). Although this court has determined that a limited deposition of Melia is material and necessary to the prosecution of the action (see CPLR 3101[a]), HSS's initial refusal to produce her did not constitute a "willful" failure to make disclosure, as that term is understood in the context of discovery disputes. Rather, the dispute here revolved around a difference of opinion with respect to the legal issue as to whether the deposition of a hospital risk management director is permissible and, if so, is warranted. Hence, the court declines to strike HSS's answer or to impose sanctions upon it for its initial failure to produce Melia for a deposition.

For the same reasons as the court is granting the plaintiff's motion to compel HSS to produce Melia for a limited deposition, it denies HSS's cross motion for a protective order precluding the plaintiff from conducting that deposition, and for the imposition of sanctions upon

the plaintiff for seeking that deposition. A successful discovery motion does not require a court to impose sanctions upon the unsuccessful party (see *Carson v Hutch Metro Ctr., LLC*, 110 AD3d 468, 469 [1st Dept 2013]). A fortiori, there is no basis to impose sanctions upon the successful party here.

MOTION SEQUENCE 004

The court denies, as academic, those branches of the plaintiff's motion under SEQUENCE 004 as sought to compel the institutional NYPH defendants and HSS to comply with this court's December 6, 2023, March 7, 2024, and June 20, 2024 discovery conference orders, since, during the pendency of the motion, they provided discovery items that complied with those orders. Where, as here, outstanding discovery materials ultimately are produced, "[m]ere lack of diligence in furnishing some of the requested materials is not grounds for" the imposition of sanctions (*Postel v New York Univ. Hosp.*, 262 AD2d 40, 42 [1st Dept 1999]). For that reason, the plaintiff has not established that those defendants' delay in providing discovery was willful and contumacious and, consequently, the court denies those branches of her motion seeking the imposition of sanctions (see *Butler v Knights Collision Experts, Inc.*, 165 AD3d 406, 407 [1st Dept 2018]; *Tanriverdi v United Skates of Am., Inc.*, 164 AD3d 858, 860 [2d Dept 2018]; *Walter B. Melvin, Architects, LLC v 24 Aqueduct Lane Condominium*, 51 AD3d 784, 785 [2d Dept 2008]; *Chamberlain, D'Amanda, Oppenheimer & Greenfield v Beauchamp*, 247 AD2d 858, 859 [4th Dept 1998]).

In light of the statutory requirement of full disclosure of all matters that are material and necessary in the prosecution of an action, that branch of the plaintiff's motion which was to compel the institutional NYPH defendants and HSS to respond to her October 30, 2023 notice for discovery and inspection is granted only to the extent that, on or before April 30, 2025, they are directed to respond to that notice and produce all responsive documents, except insofar as that notice sought production of documents specifically referable to patients other than the plaintiff, and the motion is denied as to any such request.

Initially, HSS and its employees have the burden of establishing that any statutory or common-law privilege shields their documents from disclosure (see *Newman v Mount Sinai Med. Ctr., Inc.*, 205 AD3d 548, 549 [1st Dept 2022]).

Generally, a hospital's policies, procedures, and practice guidelines that are relevant to the underlying factual dispute in a medical malpractice are discoverable (see *Little v Highland Hosp. of Rochester*, 280 AD2d 908, 909 [4th Dept 2001] [statutory provisions applicable to hospital's confidentiality and protection from disclosure of certain records do not "extend to its written plan for reviewing, evaluating and maintaining the quality of patient care and identifying and preventing medical, dental and podiatric malpractice"]; *McCormack v Mount Sinai Hosp.*, 88 AD2d 947, 947 [2d Dept 1982]; *Gourdine v Phelps Mem. Hosp.*, 40 AD2d 694, 695 [2d Dept 1972]; *Destefano v Goyal*, 2023 NY Misc LEXIS 32747, *3 [Sup Ct, Westchester County, May 2, 2023]; *Elias v Tolbert*, 2019 NY Slip Op 31779[U], *11-12, 2019 NY Misc LEXIS 3331 *16-18 [Sup Ct, N.Y. County, Jun. 13, 2019]; *Radoncic v Velcek*, 20 Misc 3d 1141[A], 2008 NY Slip Op 51818[U], *4, 2008 NY Misc LEXIS 5320, *8-9 [Sup Ct, N.Y. County, Aug. 22, 2008]; *Carroll v Nunez* [Sup Ct, Ulster County, Mar. 5, 1987, *affd* 137 AD2d 911, 912 [3d Dept 1988]; *cf. Brandes v North Shore Univ. Hosp.*, 1 AD3d 550, 551 [2d Dept 2003] [plaintiff's request for production of hospital policies referable to nine separate departments was overbroad and not properly limited to factual issues in dispute]). Mandatory policies and procedures that hospitals are required to promulgate include procedures and rules for the admission and discharge of patients, including pediatric patients (see 10 NYCRR 405.9), and hospitals also are required to maintain a permanent record of admissions and discharges of all patients that include numerous mandatory items of data that must be maintained (see 10 NYCRR 405.9[b][11]). Those policies and procedures are necessarily discoverable as well.

Nonetheless, Public Health Law § 18(6), CPLR 4505 (codifying the physician-patient privilege), and the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d, *et seq.*) generally prevent disclosure of third-party health records without authorization and,

thus, would prevent the disclosure of any information that also would reveal that patient's medical status. Hence, in general, discovery pertaining to patients other than the plaintiff should not be permitted (*see Vozzo v Cheruku*, 23 Misc 3d 1133[A], 2009 NY Slip Op 51067[U], *6, 2009 NY Misc LEXIS 1305, *11-12 [Sup Ct, Kings County, May 29, 2009]; *see also Marte v Brooklyn Hosp. Ctr.*, 9 AD3d 41, 47 [2d Dept 2004]; *Gunn v Sound Shore Med. Ctr.*, 5 AD3d 435, 437 [2d Dept 2004]).

“When seeking discovery of a nonparty's medical records, a plaintiff must demonstrate that the information being sought is ‘material and necessary’ in the prosecution of the action and that the circumstances warrant overcoming the privilege and permitting discovery of the records with all identifying patient information appropriately redacted to protect patient confidentiality”

(*De La Cruz v Westchester Med. Group., P.C.*, 2023 NY Misc LEXIS 33373, *7-8 [Sup Ct, Westchester County, Mar. 20, 2023]). Consequently, where, as here, a plaintiff in a medical malpractice action apparently seeks the production of documents containing information that might reveal the identities of other patients, it is a proper exercise of the court's discretion to deny access to those records “in light of the privileged nature of the subject records and the bare allegations of relevancy, . . . even with their names redacted” (*Whitnum v Plastic & Reconstructive Surgery, P.C.*, 142 AD3d 495, 496-497 [2d Dept 2016]). The assessments of other patients not only are privileged, but are completely irrelevant to the issue of whether any of the defendants deviated from the applicable standard of care in examining, treating, deciding whether to transfer, or discharging the plaintiff from a facility. Thus, the plaintiff is not entitled to the production of documents that reflect the assessments, by HSS and the institutional NYPH defendants, of patients other than herself, but only is entitled to records reflecting her own assessments and written policies concerning how those defendants make the assessments enumerated by the plaintiff in her notices for discovery and inspection.

Conversely, agreements between hospitals, or between hospitals and other health-care providers, that govern their conduct in connection with the allocation of personnel, obligations and duties, patient transfers between facilities, and patient admissions, are discoverable, as

such documentation is likely to lead to the discovery of admissible evidence in this action (see *Moss v Mumford*, 2021 NY Slip Op 30427[U], *6, 2021 NY Misc LEXIS 578, *9-10 [Sup Ct, N.Y. County, Feb, 11, 2021] [Kelley, J.]; see also *Bradley v Urh*, 2023 NY Misc LEXIS 31783, *4-5 [Sup Ct, Suffolk County, Jul. 5, 2023]).

Consequently, that branch of the plaintiff's motion seeking to compel HSS and the institutional NYPH defendants to respond to her October 30, 2023 notice for discovery and inspection is granted only to the extent that those defendants shall produce documents responsive to the notice, except that they are relieved of the obligation of producing any documentation, in their possession, constituting specific records referable to the treatment, assessment, and transfer of patients other than the plaintiff herself. Hence, the institutional NYPH defendants (and HSS, if it is in possession thereof) must produce their policies with respect to assessments of patients in the pediatric intensive unit and their assessments of patients by physicians with respect to results of tests that yield critical values, NYPH records referable to the plaintiff's transfer from the NYPH pediatric intensive care unit, NYPH policies referable to the transfer or discharge of patients with results of tests that had yielded critical values, life-threatening conditions, or conditions that require immediate attention from the pediatric intensive care unit, NYPH policies referable to its written discharge plans and how those plans are communicated to the patient, NYPH policies referable to the communication of critical value results to the patient or the patient's medical decision makers, and NYPH policies concerning the communication of critical-value results, life-threatening conditions, or conditions that require immediate attention to attending physicians. Moreover, both the institutional NYPH defendants and HSS must produce agreements, contracts, correspondence, or memoranda of understanding between them, in effect during May and June 2007, regarding the treatment of HSS patients at NYPH facilities, the treatment of HSS patients at the NYPH pediatric intensive care unit, and the transfer or discharge of NYPH pediatric intensive care unit patients to HSS.

The court rejects the plaintiff's contention that, inasmuch as the errata sheet submitted by the defendant Hsing made substantive changes to her deposition testimony, it must be stricken. At her deposition, pediatrician Hsing testified that, on June 7, 2007, she was on call at Weill Cornell Hospital until 4:30 p.m., and that, inasmuch as the plaintiff had been brought to Hsing's department at 4:00 p.m., she likely was involved in her treatment between 4:00 p.m. and 4:30 p.m. Hsing further testified that, inasmuch as she "signed out" with respect to the plaintiff's care at 4:30 p.m., she had nothing to do with the plaintiff's examination, care, or treatment after 4:30 p.m., and that she had transferred the plaintiff's care to another attending physician at that time. After her deposition, however, she reviewed the pediatrics call schedule for that evening, which indicated that she had in fact remained on call from 4:30 p.m. on June 7, 2007 until 8:00 a.m. on June 8, 2007. Consequently, Hsing submitted an errata sheet in which she modified her testimony to indicate that she did not recall whether she provided treatment and care to the plaintiff during that later interval, or whether she had transferred the responsibility for the plaintiff's care to another physician during that period of time.

CPLR 3116(a) provides, in relevant part, that,

"[t]he deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them."

Where a deponent provides an adequate reason for any substantive changes that he or she seeks to make in the subject testimony, a motion to strike the errata sheet should be denied (*see Mojica v Church of the Immaculate Conception*, 219 AD3d 1252, 1253 [1st Dept 2023]; *Cillo v Resjefal Corp.*, 295 AD2d 257, 257 [1st Dept 2002] [allowing even substantive and material changes where the explanation is adequate]; *Gottwald v Sebert*, 2018 NY Misc LEXIS 14758, *2-3 [Sup Ct, N.Y. County, May 23, 2028] [same]; *cf. Torres v Board of Educ. of City of N.Y.*, 137 AD3d 1256, 1257 [2d Dept 2016] [Second Department, unlike First Department, holds that CPLR 3116 does not permit any "material," "critical" or "substantive" changes]).

The court concludes that Hsing, through her attorney, provided an adequate reason for the changes (see *Permutt v Jefferson Val. Professional*, 2020 NY Slip Op 34783[U], *6-7, 2020 NY Misc LEXIS 19105, *7-8 [Sup Ct, Westchester County, Apr. 23, 2020]), specifically, that her review of the relevant pediatrics call schedule suggested that she may indeed have been involved with the plaintiff's treatment and care from 4:30 p.m. on June 7, 2007 until 8:00 a.m. on June 8, 2007, but that she had no specific recollection of what, if anything, she may have done during that period of time, and whether she then handed off the plaintiff to another pediatrician (cf. *Torres v Board of Educ. of City of N.Y.*, 137 AD3d at 1257 [contention that deponent merely "mis-spoke" constitutes an inadequate reason for change in testimony]; *Horn v 197 5th Ave. Corp.*, 123 AD3d 768, 769-770 [2d Dept 2014] [inadequate excuse for substantive changes where deponent premised her testimony on her accident having occurred at a location depicted in photographs of an incorrect location]; *Ashford v Tannenhauser*, 108 AD3d 735, 736 [2d Dept 2013] [allegation that deponent was "nervous" at deposition was inadequate reason for change in testimony]).

Although the court has the inherent power to permit a change in a deponent's deposition testimony (see *Morin v Heritage Bldrs. Group, LLC*, 211 AD3d 1138, 1144 [3d Dept 2022]), where, as here, a deposition correction does not appear to be patently untrue or tailored to avoid the consequences of a deponent's earlier testimony, any conflict between the original deposition testimony and the errata sheet merely raises an issue of credibility for the jury to decide (see *Orenstein v 301 E. 78 St. Owners Corp.*, 231 AD3d 626, 627 [1st Dept 2024]; *Mojica v Church of the Immaculate Conception*, 219 AD3d at 1253; *Clindinin v New York City Hous. Auth.*, 117 AD3d 628, 629 [1st Dept 2014]; *Terrero v New York City Hous. Auth.*, 116 AD3d 570, 571 [1st Dept 2014]; *Binh v Bagland USA, Inc.*, 286 AD2d 613, 614 [1st Dept 2001]). Since "any purported conflict between the original deposition testimony and the correction raises issues of credibility," the plaintiff "will have the opportunity to impeach such changes at the time of trial" (*Jackson v OpenCommunications Omnimedia, LLC*, 2015 NY Slip Op 30120[U], *3,

2015 NY Misc LEXIS 226, *3 [Sup Ct, N.Y. County, Jan. 28, 2015] [denying motion to strike errata sheet]).

The court denies that branch of the plaintiff's motion seeking an order deeming, as admitted, the requests for admission set forth in their notice to admit. CPLR 3123(a) provides, in pertinent part, that

“a party may serve upon any other party a written request for admission by the latter. . . of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry.”

"The purpose of a notice to admit is only to eliminate from the issues in litigation matters which will not be in dispute at trial. It is not intended to cover ultimate conclusions, which can only be made after a full and complete trial" (*Lotrean v 3M Co.*, 2022 NY Slip Op 32679[U], *2, 2022 NY Misc LEXIS 3990, *3 [Sup Ct, N.Y. County, Aug 8, 2022]; see also *Tonkiwa, Ltd. v Truesdell*, 155 AD3d 1479, 1481 [3d Dept 2017]; *Nacherlilla v Prospect Park Alliance, Inc.*, 88 AD3d 770, 771-772 [2d Dept 2011]; *Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320, 324 [1st Dept 2004]; *DeSilva by DeSilva v Rosenberg*, 236 AD2d 508, 508 [2d Dept 1997]). Stated differently, a notice to admit is designed to secure a stipulation regarding certain specific matters about which there is general agreement (see *Lewis v Hertz Corp.*, 193 AD2d 470, 470 [1st Dept 1993]; *Hodes v New York*, 165 AD2d 168, 170-171 [1st Dept 1991]).

A notice to admit is improper where it seeks admission of obviously disputed matters that go to the heart of the controversy between the parties (see *Village of Malone v Stone Mtn. Prime, LLC*, 204 AD3d 1148, 1150 [3d Dept 2022]; *Lewis v DiMaggio*, 151 AD3d 1296, 1298 [3d Dept 2017]; *Priceless Custom Homes, Inc. v O'Neill*, 104 AD3d 664, 665 [2d Dept 2013]), or requests admission of material or ultimate issues of fact (see *Eddyville Corp. v Relyea*, 35 AD3d 1063, 1066 [3d Dept 2006]; see also *32nd Ave. LLC v Angelo Holding Corp.*, 134 AD3d 696, 698 [2d Dept 2015]; *Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison*, 214 AD2d 453, 453 [1st Dept 1995]; *Taylor v Blair*, 116 AD2d 204, 206 [1st Dept 1986]). Finally, a notice to admit

may not be used to obtain information in lieu of other disclosure devices such as depositions, where those other disclosure devices are superior (*see Genna v Klempner*, 195 AD3d 444, 444 [1st Dept 2021]; *Voigt v Savarino Constr. Corp.*, 94 AD3d 1574, 1575 [4th Dept 2012]; *Falkowitz v Kings Hwy. Hosp.*, 43 AD2d 696, 696 [2d Dept 1973]). Courts may strike a request to admit if it predominately contains improper questions (*see Berg v Flower Fifth Ave. Hosp.*, 102 AD2d 760, 761 [1st Dept 1984]). Even if “a few proper requests may be interspersed in the Notice to Admit . . . it is not the court’s obligation to prune th[at] pre-litigation device[]” (*Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison*, 214 AD2d at 453-454).

Here, the plaintiff’s notice to admit improperly requested the NYPH defendants to admit facts in connection with clearly disputed issues or facts related to whether Hsing continued to render treatment to the plaintiff between 4:30 p.m. on June 7, 2007 and 8:00 a.m. on June 8, 2007, whether she transferred primary responsibility of care to the plaintiff to another NYPH physician, and whether their records reflect whether Hsing continued, or such other physician assumed, the obligation to oversee the plaintiff’s case. In light of the court’s discussion with respect to Hsing’s deposition testimony and her errata sheet, as well as the fact that the plaintiff’s already are in possession of the relevant medical records, which appear to contradict Hsing’s initial deposition testimony, it is clear that disclosure devices other than a notice to admit are far superior for the purpose ascertaining the underlying facts or to illustrate contradictions and provide a basis to challenge both Hsing’s credibility and that of other witnesses. In this respect, the plaintiff’s

“notice to admit called upon [her opponents] to admit . . . fact[s] . . . as to which [their] attorney[s] could not reasonably have believe[d] there [could] be no substantial dispute at the trial . . . and which improperly went to the heart of the matter at issue. Therefore, [her opponents] should not be bound by the notice to admit, even if [they] failed to properly respond to it”

(*Smith v County of Nassau*, 138 AD3d 726, 729 [2d Dept 2016] [citations and internal quotation marks omitted]).

The court notes that the plaintiff served her notice to admit on May 22, 2024, the NYPH defendants served objections thereto on July 10, 2024, and moved for a protective order on November 11, 2024 (SEQ 006). To the extent that the plaintiff contends that these defendants did not timely serve objections or seek a protective order because they failed to object or move within 20 days of May 20, 2024, as required by CPLR 3123(a), CPLR 3103(a) specifically states that the court may issue such a protective order “at any time” (CPLR 3103[a]; see *Nader v Gen. Motors Corp.*, 53 Misc 2d 515, 517 [Sup Ct, N.Y. County 1967] *affd* 29 AD2d 632 [1st Dept 1967] [finding that the extremely broad language of CPLR 3103 is clear and unequivocal in permitting a court to rule in advance or trial or at any time on demands to any disclosure device, including a notice to admit]). The court notes that, for the reasons set forth above, it is granting the NYPH defendants’ motion for a protective order, under SEQUENCE 006, relieving them of the obligation of responding to the plaintiff’s notice to admit. Consequently, the court must deny that branch of the plaintiff’s motion under SEQUENCE 004 seeking an order deeming, as admitted, the statements articulated in her May 22, 2014 notice to admit.

SEQUENCE 005

On September 17, 2024, the plaintiff served second, third, and fourth amended bills of particulars as to the HSS defendants, which she mischaracterized as supplemental bills of particulars, since the new bills alleged new theories of liability or newly identified departures from good and accepted practice (*compare Anderson v Ariel Servs., Inc.*, 93 AD3d 525, 525 [1st Dept 2012] [supplemental bill of particulars is one that concerns the “continuing consequences” of a previously identified injury, and does not require prior leave of the court] with *Stovall v Lenox Hill Hosp.*, 200 AD3d 570, 571 [1st Dept 2021] [bill of particulars that adds a new theory of liability is an amended bill of particulars] and *Vargas v Villa Josefa Realty Corp.*, 28 AD3d 389, 391 [1st Dept 2006] [bill of particulars that identifies a new injury is an amended bill of particulars]). A party may amend his or her bill of particulars once as of right prior to filing the note of issue (see CPLR 3042[b]). Since the plaintiff already had served a first amended bill of

particulars prior to serving the second, third, and fourth bills of particulars, she was required to obtain leave of court to serve these latter bills. The plaintiff, however, now seeks leave to serve amended second, third, and fourth bills particulars, and deem them served nunc pro tunc.

Leave to amend a bill of particulars is to be freely given, absent prejudice or surprise resulting from the amendment (see CPLR 3025[b]; 3043[b]; *Achee v Merrick Vil., Inc.*, 208 AD3d 542, 542 [2d Dept 2022]; *Burns v Kroening*, 164 AD3d 1640, 1641 [4th Dept 2018]; *Henchy v VAS Express Corp.*, 115 AD3d 478, 479 [1st Dept 2014]; *Spiegel v Gingrich*, 74 AD3d 425, 426 [1st Dept 2010]). The court must examine the sufficiency of the proposed amendment only to determine whether the proposed amended pleading is “palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; see *Achee v Merrick Vil., Inc.*, 208 AD3d at 542; *Hill v 2016 Realty Assoc.*, 42 AD3d 432 [2d Dept 2007]).

The HSS defendants failed to establish that the amended bills of particulars were palpably insufficient or clearly devoid of merit, or that they would suffer prejudice from the proposed amendments. Hence, the plaintiff’s cross motion for leave to serve a second, third, and fourth amended bill of particulars as to the HSS defendants is granted, and the motion of the HSS defendants to strike those bills of particulars is denied as academic.

For the same reasons that the court granted, in part, that branch of the plaintiff’s motion under MOTION SEQUENCE 004 which sought to compel the HSS defendants to respond to her October 30, 2023 notice for discovery and inspection, that branch of the HSS defendants’ motion under MOTION SEQUENCE 005 seeking a protective order in connection with that notice is granted only to the extent that they are relieved of the obligation to produce any documentation constituting specific records referable to the treatment, assessment, and transfer of patients other than the plaintiff herself, and otherwise denies the motion, and directs them to produce those documents, in their possession, that the court described in its discussion of MOTION SEQUENCE 004. For the reasons articulated in that discussion, that branch of the HSS defendants’ motion seeking a protective order in connection with the plaintiff’s August 9,

2024 notice for discovery and inspection is granted only to the extent that they are relieved of the obligation of producing copies of “any record or information on any record kept pursuant to 10 NYCRR 405.9(h)(7)(i) that was provided to New York Presbyterian Hospital or Weill Cornell Medical College pursuant to the above regulation” and “any record or information on any record kept pursuant to 10 NYCRR 405.9(h)(7)(i) that was provided to Hospital for Special Surgery pursuant to the above regulation.” A full response to those requests likely would involve details referable to patients other than the plaintiff. That branch of the motion is otherwise denied, and, on or before April 30, 2025, the HSS defendants are directed to produce any documents, to the extent that they are in their possession, constituting the institutional NYPH defendants’ written discharge policies pursuant to 10 NYCRR 405.9 and policies for the management of post-operative pediatric patients undergoing orthopedic surgery that were in effect during June 2007. They also shall produce any record required to have been generated pursuant to 10 NYCRR 405.9(h)(7)(i), specific to the plaintiff’s case, that they either provided to or received from the institutional NYPH defendants pursuant to that regulation.

SEQUENCE 006

For the same reasons set forth in the court’s discussion of the plaintiff’s cross motion under MOTION SEQUENCE 005, the court grants the plaintiff’s cross motion, under MOTION SEQUENCE 006, for leave to serve a second, third, and fourth amended bill of particulars as to the NYPH defendants, and deem them properly to have been served nunc pro tunc. For the same reasons underpinning the denial of that branch of the HSS defendants’ motion under MOTION SEQUENCE 005 seeking to strike the amended bills of particulars as to those defendants, the court denies that branch of the NYPH defendants’ motion under MOTION SEQUENCE 006 seeking to strike those amended bills of particulars as to them.

CPLR 3103(a) allows the court, on its own motion or on motion of any party, to make a protective order denying, limiting, conditioning, or regulating the use of any disclosure device. A party may “seek a protective order if the requests in the notice to admit are claimed not to be the

proper subject of inquiry under CPLR 3123(a)” (*Howlan v Rosol*, 139 AD2d 799, 801 [3d Dept 1988]; see *Jet One Group, Inc. v Halcyon Jet Holdings, Inc.*, 111 AD3d 890, 893 [2d Dept 2013]). In light of the NYPH defendants’ objections to the plaintiff’s May 22, 2024 notice to admit, and for the same reasons set forth in the court’s discussion of the plaintiff’s motion under MOTION SEQUENCE 004, determining that the plaintiff’s notice to admit improperly sought admissions of both legal conclusions and ultimate issues going to the core of the dispute, the court grants that branch of the NYPH defendants’ motion under MOTION SEQUENCE 006 seeking a protective order relieving them of the obligation to respond to the notice to admit.

The court denies that branch of the NYPH defendants’ motion seeking to quash the so-ordered subpoenas issued by the court in connection with the proposed nonparty depositions of former NYPH employees Alison Shuman, M.D., and Jaclyn Davis, M.D., and to bar the further deposition of any witnesses on behalf of the NYPH defendants, both institutional and individual. The plaintiff, in seeking such nonparty disclosure, has shown that the disclosure is “material and necessary” to the prosecution or defense of the action (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]). Although the nonparty witnesses reside in California and New Jersey, respectively, both of those states have enacted the streamlined provisions of the Uniform Interstate Depositions and Discovery Act (UIDDA) (Cal Civ Proc Code §§ 2029.100-.900; NJ Sup Ct Order, 2014-94, Rule 4:11-4[a]; cf. CPLR 3119), which permits a party to obtain a so-ordered subpoena from the forum-state court---here, from a New York court---and simply file it in a California or New Jersey trial court, as the case may be, which court would then issue a California or New Jersey subpoena.

Notwithstanding these state statutes, a party may still avail himself or herself of the open commission procedure. That process, codified in CPLR 3108, permits a party to: (a) secure an open commission, letters rogatory, or other permission from a New York court to conduct the deposition, and (b) commence a proceeding in the courts of the deponent’s home state to compel issuance of a subpoena. There appears to be no prohibition under California or New

Jersey law on the filing in a California or New Jersey court of an order granting an open commission, the open commission itself, and a proposed subpoena. CPLR 3108 provides, in relevant part, that “[a] commission or letters rogatory may be issued where necessary or *convenient* for the taking of a deposition outside of the state” (emphasis added). “As long as the witness is without the State, rendering him [or her] unavailable to the service of a subpoena within the State, resort to CPLR 3108 is permissible” (*Wiseman v American Motors Sales Corp.*, 103 AD2d 230, 235 [1st Dept 1984]).

“The commission procedure is available where the notice procedure under the circumstances of the case or the place where the deposition is to be taken may be deemed impracticable or there is some doubt as to whether the deposition may be taken. There will be occasions when the party seeking disclosure detects that the judicial imprimatur accompanying a commission will be necessary or helpful when the person he designates to conduct the deposition in accordance with CPLR 3113 seeks the assistance of the foreign court in compelling the witness to attend the examination. In such a case, the party's application for a commission should not be dismissed because the movant is taking the precaution of having his designee formally denominated a commissioner rather than first proceeding by notice”

(*id.* at 235-236; see *Reyes v Riverside Park Community (Stage I), Inc.*, 59 AD3d 219 [1st Dept 2009]; *Lewis v Baker*, 279 AD2d 380 [1st Dept 2001]; *Susan A. v Steven J.A.*, 141 AD2d 790, 791 [2d Dept 1988]).

Hence, the plaintiff may avail herself either of the UIDDA or the open commission procedure in deposing Drs. Shuman and Davis, and there is no basis for the issuance of a protective order prohibiting the plaintiff from deposing them in their home states or quashing this court's so-ordered subpoenas (see generally *Anderson v State of New York*, 134 AD3d 1061, 1062-1063 [2d Dept 2015] [even where statute otherwise limits the production of certain documents to the general public, a court may issue a so-ordered subpoena to a party engaged in civil litigation that overrides the statutory prohibition]). “An application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry” (*Anheuser-Busch, Inc. v Abrams*, 71 NY2d 327, 331-332 [1988] [internal quotation marks,

brackets, and citations omitted]), and the NYPH defendants, as the parties seeking to quash the subpoenas, bear the burden of making that showing (*see e.g. Wells Fargo Bank N.A. v Andalex Aviation II, LLC*, 173 AD3d 418, 419 [1st Dept 2019] [affirming denial of motion because “movant failed to carry her prima facie burden of showing that the discovery sought was irrelevant”]; *see also Evans v Punter*, 2023 NY Slip Op 34131[U], *3-4, 2023 NY Misc LEXIS 22705, *4 [Sup Ct, N.Y. County, Nov. 22, 2023]). The NYPH defendants failed to satisfy their burden in this regard. Nor have they made a persuasive argument as to why the plaintiff should be prohibited from conducting additional depositions of persons on behalf of the NYPH defendants. Even if she already has conducted 10 depositions of those defendants, that number serves as a limitation (*see* 22 NYCRR 202.20-b[a][1]) “[u]nless otherwise . . . ordered by the court” (22 NYCRR 202.20-b[a]). The court thus must await any application by the plaintiff to conduct more than 10 depositions of the NYPH defendants, or other proof by the NYPH defendants, before it will intervene in limiting that method of discovery.

Any request for relief not expressly addressed by the court is denied.

The court notes that it encourages parties to resolve discovery disputes by requesting a remote or in-person conference with the court, and discourages parties from making discovery motions. In this action, where the parties apparently have been very antagonistic to their adversaries in accommodating discovery requests, the court concludes that it would be wise for the parties to contact the court and participate in a discovery conference to resolve any future discovery disputes before resorting to motion practice, particularly in light of the fact that this action has been pending for 11 years.

Accordingly, it is,

ORDERED that, in connection with MOTION SEQUENCE 003, the plaintiff’s motion is granted only to the extent that the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, and Hospital for Special Surgery, PHO, Inc., are directed to produce their

Director of Risk Management, Joanne Meila, for a deposition on or before April 24, 2025, which shall be limited to two hours, and shall be limited to the issues surrounding communications between Joanne Meila and the defendant Oheneba Boachie-Adjei, M.D., concerning the risk of taking on the plaintiff as a patient at the Hospital for Special Surgery and the risk of transferring her from another hospital to the Hospital for Special Surgery, and the plaintiff's motion under MOTION SEQUENCE 003 is otherwise denied; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 003, the cross motion of the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, and Hospital for Special Surgery, PHO, Inc., pursuant to CPLR 3103 for a protective order precluding the plaintiff from conducting a deposition of Joanne Meila, and pursuant to 22 NYCRR part 130 for the imposition of sanctions upon the plaintiff in connection with her attempts to depose Joanne Melia, is denied; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 004, the plaintiff's motion is granted only to the extent that, on or before April 30, 2025, the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, and Hospital for Special Surgery, PHO, Inc., New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College shall respond to the plaintiff's October 30, 2023 notice of discovery and inspection, except to the extent that that notice sought production of documents specifically referable to patients other than the plaintiff, and those defendants shall thus, on or before April 30, 2025, produce documents, in their possession:

- (a) Constituting or setting forth the policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College with respect to assessments of patients in the pediatric intensive unit, and their physicians' assessments of patients whose testing yielded results indicating critical values, constituting records of the

defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College that are referable to the plaintiff's transfer from their pediatric intensive care unit, referable to the transfer or discharge of patients with results of tests that yield critical values, life-threatening conditions, or conditions that required immediate attention from the pediatric intensive care unit, constituting or setting forth policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College that are referable to written discharge plans and how they are provided to a patient, constituting policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College that are referable to the communication of critical-value results to a patient or a patient's medical decision makers, and constituting or setting forth policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College concerning the communication of critical-value results, life-threatening conditions, or conditions that require immediate attention to attending physicians, and

- (b) consisting of or setting forth agreements, contracts, correspondence, or memoranda of understanding between the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College, on the one hand, and the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, and Hospital for Special Surgery, PHO, Inc., on the other hand, that were in effect during May and June 2007, regarding the treatment of Hospital for Special Surgery patients at New York-Presbyterian Hospital facilities, the treatment of Hospital for Special Surgery patients at the New York-Presbyterian Hospital pediatric intensive care unit, and the transfer or discharge of patients in the New York-Presbyterian Hospital pediatric intensive care unit to the Hospital for Special Surgery;

and the plaintiff's motion under SEQUENCE 004 is otherwise denied; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 005, the motion of the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, Hospital for Special Surgery, PHO, Inc., Oheneba Boachie-Adjei, M.D., Victor Zayas, M.D., East River Medical Anesthesiology, P.C., Hyun Susan Cha, M.D., and Stephanie Perlman, M.D., is granted only to the extent that they are granted a protective order (a) in connection with the plaintiff's October 30, 2023 notice for discovery and inspection, relieving them of the obligation to produce any documentation, in their possession, constituting records specific to the treatment, assessment, and transfer of patients other than the plaintiff herself, and (b) in connection with

the plaintiff's August 9, 2024 notice for discovery and inspection relieving them of the obligation of producing copies of "any record or information on any record kept pursuant to 10 NYCRR 405.9(h)(7)(i) that was provided to New York Presbyterian Hospital or Weill Cornell Medical College pursuant to the above regulation" and "any record or information on any record kept pursuant to 10 NYCRR 405.9(h)(7)(i) that was provided to Hospital for Special Surgery pursuant to the above regulation," the motion is otherwise denied, and, on or before April 30, 2025, the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, Hospital for Special Surgery, PHO, Inc., Oheneba Boachie-Adjei, M.D., Victor Zayas, M.D., East River Medical Anesthesiology, P.C., Hyun Susan Cha, M.D., and Stephanie Perlman, M.D., are directed to produce all documents in their possession that are responsive to that notice of discovery and inspection, including those responsive documents specific to the plaintiff herself, and those documents constituting or setting forth the written discharge policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College, that were promulgated pursuant to 10 NYCRR 405.9 and were in effect during June 2007, the policies of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College for the management of post-operative pediatric patients undergoing orthopedic surgery that were in effect during June 2007, and any records required to have been generated pursuant to 10 NYCRR 405.9(h)(7)(i) that were specific to the plaintiff's case, and which either were provided to or received from the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, and Weill Cornell Medical College pursuant to that regulation; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 005, the plaintiff's cross motion is granted, and she is granted leave to serve amended second, third, and fourth bills of

particulars as to the defendants The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, doing business as Hospital for Special Surgery, Hospital for Special Surgery, PHO, Inc., Oheneba Boachie-Adjei, M.D., Victor Zayas, M.D., East River Medical Anesthesiology, P.C., Hyun Susan Cha, M.D., and Stephanie Perlman, M.D., and those bills of particulars which she previously served, but improperly designated as “supplemental” bills of particulars, are deemed properly to have been served nunc pro tunc; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 006, the motion of the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, Weill Cornell Medical College, Deyin Doreen Hsing, M.D., Robbyn Sockolow, M.D., Sushima Reddy, M.D., Sheila Carroll, M.D., Leonardo Lieberman, M.D., Martha Kutko, M.D., Steven Pon, M.D., and Lawrence Siew, M.D., is granted only to the extent that they are granted a protective order striking the plaintiff’s May 22, 2024 notice to admit, and relieving them of the obligation of admitting or denying the statements articulated in that notice, the notice to admit is stricken, and these defendants’ motion under MOTION SEQUENCE 006 is otherwise denied; and it is further,

ORDERED that, in connection with MOTION SEQUENCE 006, the plaintiff’s cross motion is granted, and she is granted leave to serve amended second, third, and fourth bills of particulars as to the defendants New York and Presbyterian Hospital, also known as New York-Presbyterian Hospital, Weill Cornell Physicians, Weill Cornell Medical College, Deyin Doreen Hsing, M.D., Robbyn Sockolow, M.D., Sushima Reddy, M.D., Sheila Carroll, M.D., Leonardo Lieberman, M.D., Martha Kutko, M.D., Steven Pon, M.D., and Lawrence Siew, M.D., and those bills of particulars which she previously served, but improperly designated as “supplemental” bills of particulars, are deemed properly to have been served nunc pro tunc.

This constitutes the Decision and Order of the court.

3/7/2025

DATE

JOHN J. KELLEY, J.S.C.

MOTION 003:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
CROSS MOTION 003:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
MOTION 004:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE

MOTION 005:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
CROSS MOTION 005:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
MOTION 006:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE

CROSS MOTION 006:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE