

Rowland v Sochol

2025 NY Slip Op 35036(U)

December 24, 2025

Supreme Court, New York County

Docket Number: Index No. 805339/2024

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

LEESA ROWLAND,

Plaintiff,

- v -

KRISTEN SOCHOL, M.D., and NORTHWELL HEALTH
PHYSICIAN PARTNERS, INC.,

Defendants.

-----X

INDEX NO. 805339/2024

MOTION DATE 10/24/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice and lack of informed consent, the defendants move pursuant to 22 NYCRR 202.21(e) to vacate the note of issue and certificate of readiness, and pursuant to CPLR 2004 to extend their time for moving for summary judgment. The plaintiff opposes the motion. The motion is granted only to the extent that, (a) while the action remains on the trial calendar, the plaintiff shall, on or before January 30, 2026, prepare and provide the defendants with HIPAA-compliant authorizations permitting them to obtain her medical and other records from the 35 healthcare providers identified in the defendants' September 12, 2025 demand for authorizations, and (b) the deadline for the defendants to move for summary judgment is extended until April 30, 2026. The motion is otherwise denied. The plaintiff's failure to provide those authorizations by January 30, 2026, shall, upon the submission of an affirmation by the defendants' attorney, attesting that those authorizations have yet to be provided by that date, result in the note of issue being stricken, and may result in the imposition of other sanctions.

On September 12, 2025, the defendants served a demand that the plaintiff provide them with authorizations permitting them to obtain her medical, therapy, pharmacy, and other records from 35 healthcare providers. Even though she had yet to do so, she nonetheless served and filed a note of issue and certificate of readiness on October 8, 2025.

A court may vacate a note of issue where, as here, it appears that a material fact set forth therein, i.e., the representation that discovery is complete, is incorrect (see 22 NYCRR 202.21[e]; *Riverside Ctr. Site 5 Owner, LLC v Lexington Ins. Co.*, 225 AD3d 574, 575 [1st Dept 2024]; *Gomes v Valentine Realty LLC*, 32 AD3d 699, 700 [1st Dept 2006]; *Herbert v Sivaco Wire Corp.*, 1 AD3d 144, 147 [1st Dept 2003]). Generally, “a note of issue should be vacated when it is based upon a certificate of readiness that contains erroneous facts” (*Cromer v Yellen*, 268 AD2d 381, 381 [1st Dept 2000]). Nonetheless, where, as here, discovery is nearly completed, “[a] court, in its discretion, may allow post-note of issue discovery without vacating the note of issue as long as prejudice to either party would not result” (*WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc.*, 193 AD3d 523, 523 [1st Dept 2021]; see *Samuelson v Wollman Rink Operations, LLC*, 196 AD3d 408, 408-409 [1st Dept 2021] [permitting defendant to conduct IME while action remained on the trial calendar]). Such an exercise of discretion is particularly apt in the instant action, where this court, as a dedicated medical malpractice part, controls its own trial calendar and the scheduling of jury selection in actions that have been assigned to it.

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.*). “[A]lthough a plaintiff who commences a personal injury action has waived the physician-patient privilege to the extent that his [or her] physical or mental condition is affirmatively placed in controversy . . . , the waiver of that privilege does not permit discovery of information involving

unrelated illnesses and treatments” (*Bozek v Derkatz*, 55 AD3d 1311, 1312 [4th Dept 2008] [internal quotation marks omitted]; see *Barnes v Habuda*, 118 AD3d 1443, 1444 [4th Dept 2014]; *Felix v Lawrence Hosp. Ctr.*, 100 AD3d 470, 471 [1st Dept 2012]; *Elmore v 2720 Concourse Assoc., L.P.*, 50 AD3d 493 [1st Dept 2008]). The defendants, however, have satisfied their burden that the records for which they seek authorizations are relevant to the plaintiff’s claimed injuries (see *Budano v Gurdon*, 97 AD3d 497, 498 [1st Dept 2012]), and that, hence, the authorizations must be provided. The plaintiff’s primary contention is that, inasmuch as neither the CPLR nor the Uniform Rules of Court specifies which party must prepare the relevant authorization forms, her attorney is not obligated to do so, and the obligation to prepare the forms themselves should be placed upon the party who is seeking them, here, the defendants. Under the circumstances presented in this action, in which the plaintiff is represented by counsel, as opposed to appearing pro se, the court rejects the plaintiff’s contention that it would be overly burdensome for her attorney to prepare the authorizations for her signature before delivering them to the defendants’ attorneys.

In light of the fact that (a) the defendants’ deadline for making a summary judgment motion subsequent to the filing of the note of issue (see CPLR 3212[a]) already had expired during the pendency of their motion which, had it been fully successful, would have restored the action to pre-note of issue status, and thereupon negated that deadline, and (b) the instant motion relates to a dispute over outstanding discovery, the defendants have shown good cause for extending that deadline here (see *Brill v City of New York*, 2 NY3d 648 [2004]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]; *Cooper v Hodge*, 13 AD3d 1111 [4th Dept 2004]). The court thus extends the deadline for making a summary judgment until April 30, 2026.

Accordingly, it is,

ORDERED that the defendants’ motion is granted only to the extent that, (a) on or before January 30, 2026, and while the action remains on the trial calendar, the plaintiff shall prepare and provide the defendants with HIPAA-compliant authorizations permitting them to

obtain her medical, therapy, pharmacy, and other records from Boback Berdokhim, M.D., Ciara Marley, M.D., Amy Stein, M.D., Robert Herzuch, M.D., Lenox Hill Hospital, Lenox Hill Radiology and Medical Imaging, Stony Brook Southampton Hospital, Soriali Patel, M.D., Carolyn Boltin, M.D., Sara Zaidi, M.D., Lenco Diagnostic Laboratory, Nikki De Matteo, M.D., Tara Delcolle, M.D., Michael Khalili, M.D., NS-LIJ Urgent Care, Mia Talmor, M.D., Peter Okin, M.D., Syed Hoda, M.D., Accu Reference Medical Lab, Quest Diagnostics, Carolyn Sofka, M.D., David Lefkowitz, M.D., Victor Zayas, M.D., Kevin Math, M.D., Medright Urgent Care, Ralph Micillo, MC, Vincenzo Barbato, M.D., Avinash Kudupidi, M.D., Matthew Goldman, M.D., Alex Aponte M.D., Glenn Goldstein, M.D., Gerard DeGrogoris, M.D., Jared Steinklein, M.D., Ron Ben-Beir, M.D., and Carol Livoti, M.D., and (b) the defendants' deadline for moving for summary judgment is extended until April 30, 2026, and their motion is otherwise denied.

This constitutes the Decision and Order of the court.

12/24/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE