Colucci v Lenox Hill Hosp.
2026 NY Slip Op 30266(U)
January 26, 2026
Supreme Court, New York County
Docket Number: Index No. 805439/2020
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

----------X

WILLIAM COLUCCI and JEANETTE COLUCCI,

Plaintiffs,

- v -

LENOX HILL HOSPITAL, NORTHWELL HEALTHCARE, INC., NORTHWELL HEALTH, INC., NORTHWELL HEALTH PHYSICIAN PARTNERS, NY ORTHOPEDICS MANAGEMENT PARTNERS, LLC, SHANNON KELLY P.A., FRANKIE HAMILTON, R.N., ANDREW SAWIRES, M.D., DANIEL MURRAY M.D., TROY WANG, P.A., AMANDA TESTANI, P.A., COURTNEY MCNULTY, P.A., BENJAMIN BEDFORD, M.D., BENJAMIN B. BEDFORD, MD, P.C., ALISON PANOSIAN, M.D., ASTHA MOR, M.D., MATHEW J. ANDERSON, M.D., MIKAIL KORMA, M.D., STEVEN MANDEL, M.D., STEVEN MANDEL, M.D., P.C., BUSHRA MINA, M.D., IRA WAGNER, M.D., DAVID MATUSZ, M.D., DAVID M. MATUSZ, MD, P.C., and MARCEL BAS, M.D.,

Defendants.

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INDEX NO. 805439/2020

MOTION DATE 12/09/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 201, 202, 203, 204

were read on this motion to/for DISCOVERY.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and loss of spousal consortium, the plaintiffs move pursuant to CPLR 3124 to compel the defendants to respond to notices for discovery and inspection dated April 9, 2025 and June 6, 2025, which include demands for production of the table of contents of the policies and procedures of the defendant Lenox Hill Hospital (LHH) and a limited deposition of Alison Lace, who is the director of LHH's Quality Management department, in connection with the enforcement or non-enforcement of LHH's rules concerning signatures on medical chart entries. All of the defendants oppose the motion, and the defendants LHH, Northwell Healthcare, Inc., Northwell Health, Inc., Frankie Hamilton,

R.N., Andrew Sawires, M.D., Daniel Murray, M.D., Troy Wang, P.A., Amanda Testani, P.A., Courtney McNulty, P.A., Alison Panosian, M.D., Matthew J. Anderson, M.D., Mikail Koroma, M.D., Steven Mandel, M.D., Bushra Mina, M.D., Ira Wagner, M.D., and Marcel Bas, M.D. (collectively the Lenox Hill defendants) cross-move pursuant to 3103(a) for a protective order excusing them from producing that table of contents. The plaintiffs oppose the cross motion. The plaintiffs' motion is granted to the extent that, on or before March 31, 2026, LHH shall produce Alison Lace, or another employee with knowledge of the formulation, interpretation, and enforcement of LHH's rules regarding the signing of chart entries, for a limited deposition, except that the plaintiffs are precluded from questioning Lace or any such other employee concerning the Lenox Hill defendants' potential liability for improper signatures on medical records, or whether its employees' practice of allowing other healthcare personnel to sign a chart may shift or obscure accountability for negligent conduct. The plaintiffs' motion is otherwise denied as academic. The Lenox Hill defendants' cross motion is denied as academic.

Those branches of the plaintiffs' motion seeking discovery other than Lace's deposition are denied as academic, inasmuch as (a), on November 25, 2025, and, thus, while the motion and cross motion were pending, this court issued a status conference that addressed most of the issues concerning outstanding discovery, and (b) the Lenox Hill defendants provided the plaintiffs with a copy of the relevant table of contents and the rules and policies themselves. For the same reason, the Lenox Hill defendants' motion for a protective order is denied as academic as well.

With respect to the plaintiffs' request to compel Lace's deposition, or that of an LHH employee with knowledge of the specific rules concerning the protocol for the signing of medical chart entries, the court agrees that a limited deposition is warranted.

CPLR 3101 provides that

> "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." "The words 'material and necessary' as used in CPLR 3101(a) are 'to be interpreted

> liberally to require disclosure . . . of any facts bearing on the controversy' (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968])"

(*Matter of Steam Pipe Explosion at 41st Sts & Lexington Ave.*, 127 AD3d 554, 555 [1st Dept 2015]). The test of whether evidence is discoverable

> "is one of usefulness and reason. CPLR 3101 (subd.[a]) should be construed, as the leading text on practice puts it, to permit discovery . . . 'which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable' (3 Weinstein-Korn-Miller, N. Y. Civ. Prac., par. 3101.07, p. 31-13)"

(*Allen v Crowell-Collier Publishing Co*., 21 NY2d 403, 407 [1968]). The party seeking disclosure need only demonstrate that the discovery sought is reasonably calculated or reasonably likely to lead to the discovery of information bearing on the claims in dispute in the action (*see Forman v Henkin*, 30 NY3d 656, 661, 666 [2018]; *Matter of Icahn Partners, L.P. v AllianceBernstein, L.P*., 243 AD3d 408, 409 [1st Dept 2025]; *Crazytown Furniture, Inc. v Brooklyn Union Gas Co*., 150 AD2d 420, 421 [2d Dept 1989]). "'Any matter which may lead to the discovery of admissible proof is discoverable'" (*A.O. v Diocese of Brooklyn*, _____AD3d_____, 2025 NY Slip Op 06713, *2 [2d Dept, Dec. 3, 2025], quoting *Holloway v Orthodox Church in Am*., 232 AD3d 773, 774 [2d Dept 2024], quoting, in turn, *Bigman v Dime Sav. Bank of N.Y., FSB*, 153 AD2d 912, 914 [2d Dept 1989]; *see Cajamarca v Osatuk*, 163 AD3d 619, 620 [2d Dept 2018]).

As relevant here, Article IX, section 2, paragraph B, of the Rules and Regulations of the Medical Staff of Lenox Hill Hospital New York provides that

> "[e]ach entry must be signed, dated, timed, legible, and authenticated by the person completing such entry. Medical record entries should be made only by those actively involved in the professional treatment of the patient and only on the forms that are an authorized part of the medical record."

At his deposition, the defendant David Matusz, M.D., who is employed by LHH, conceded that he did not personally review or sign several of the chart entries referable to his personal examinations and treatment of the plaintiff William Colucci (the patient), but instead permitted his subordinates to do so. Testimony of a person with knowledge of how that rule is enforced, or whether it is enforced at all, may lead to relevant and admissible evidence. Specifically, it

may lead to evidence as to whether chart entries made by hospital staff who themselves may not have had knowledge of Matusz's observations, findings, and conclusions caused other LHH healthcare providers to perform improper examinations, fail to perform proper examinations or order necessary diagnostic testing, or to make improper conclusions as to diagnoses and treatment options.

The court further concludes that neither Education Law § 6527(3) nor Public Health Law § 2805-m(2) immunizes Lenox Hill from producing Lace or a similarly knowledgeable person from giving deposition testimony as to the hospital's policies and procedures with respect to enforcement of the subject rule. Public Health Law § 2805-j(1) provides, in pertinent part, that "[e]very hospital shall maintain a coordinated program for the identification and prevention of medical . . . malpractice." Such a program must at least include, among other things, the "establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical . . . care of patients and to prevent medical . . . malpractice" (Public Health Law § 2805-j[1][a]). Education Law § 6527(3) exempts certain records from CPLR article 31 disclosure, and provides that

> "[n]either the proceedings nor the records relating to performance of a medical or Quality Assurance review function or participation in a medical and dental malpractice prevention program nor any report required by the department of health pursuant to section twenty-eight hundred five-*l* of the public health law described herein, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, shall be subject to disclosure under article thirty-one of the civil practice law and rules."

That statute also shields from disclosure the testimony of any person in attendance at such a meeting as to what transpired when a medical or quality assurance review function or medical malpractice prevention program was performed (*see Logue v Velez*, 92 NY2d 13, 16-17 [1998]; *Hernandez v City of New York*, 207 AD3d 450, 453 [2d Dept 2022]; *Siegel v Snyder*, 202 AD3d 125, 136-137 [2d Dept 2021]).

> "The purpose of the discovery exclusion is to enhance the objectivity of the review process and to assure that medical review committees may frankly and objectively analyze the quality of health services rendered by hospitals. By

> guaranteeing confidentiality to quality review and malpractice prevention procedures, this provision is designed to encourage thorough and candid peer review of physicians, and thereby improve the quality of medical care"

(*Logue v Velez*, 92 NY2d at 17 [citation and internal quotation marks omitted]; see *Hernandez v City of New York*, 207 AD3d at 453; *vanBergen v Long Beach Med. Ctr.,* 277 AD2d 374, 374 [2d Dept 2000]). Public Health Law § 2805-m(2) affords similar protection from disclosure for "records, documentation or committee actions or records" generated pursuant to Public Health Law § 2805-j (*see Siegel v Snyder*, 202 AD3d at 137).

The Court of Appeals recognized a statutory exception to confidentiality, as otherwise required both by Education Law § 6527(3) and Public Health Law § 2805-m(2), for "statements made by any person in attendance at such a meeting *who is a party to an action or proceeding* the subject matter of which was reviewed at such meeting" (*Logue v Velez*, 92 NY2d at 16, 19 quoting Education Law § 6527[3] and Public Health Law § 2805-m[2] [emphasis added]). The Court concluded that these exceptions necessarily "permit discovery of statements given by a physician or other health professional in the course of a hospital's review of the facts and circumstances of *an earlier incident which had given rise to a malpractice action*" (*Logue v Velez*, 92 NY2d at 19 [emphasis added]).

Lace's knowledge of the subject LHH rule is not privileged under Education Law § 6527(3) or Public Health Law § 2805-m(2), as it does not pertain to quality assurance or peer review materials, records reflecting "participation in a medical and dental malpractice prevention program," or reports required by the New York State Department of Health, but rather to LHH's general operational standards, and how it enforces them in general, rather than in Matusz's particular case. Nonetheless, if Matusz himself made a written or oral statement to hospital personnel concerning any review of his compliance with the chart-signature rule, as applied to the patient's case, the plaintiff is entitled to disclosure of Matusz's own statements.

The court further concludes that the request for Lace's deposition is not unduly burdensome, since the plaintiffs' request does not seek unlimited information as to all of the

times, locations, and subject matter of issues arising from signatures made by healthcare personnel who did not directly examine, test, or render treatment to a patient, or who assist another healthcare provider in such examination, testing, or treatment. Instead, as the plaintiffs correctly contend, their request is narrowly tailored as to time (October 30, 2019 through December 20, 2019), location (LHH) and subject matter (the responsibilities of staff and admitting physicians in electronically signing and/or co-signing notes). The Lenox Hill defendants, however, correctly argue that such inquiry shall not extend to questions concerning their potential liability for improper signatures on medical records or whether such practices may shift or obscure accountability for negligent conduct, since those are legal rather than factual issues, which a hospital official should not be required to address at a deposition. Palpably improper questions include those that seek legal conclusions or are otherwise related to a party's understanding of his or her legal contentions (*see Mayer v Hoang,* 83 AD3d 1516, 1518 [4th Dept 2011]; *Barber v BPS Venture, Inc*., 31 AD3d 897, 897 [3d Dept 2006]; *Lobdell v South Buffalo Ry*., 159 AD2d 958, 958 [4th Dept 1990]).

Accordingly, it is,

ORDERED that the plaintiffs' motion is granted to the extent that, on or before March 31, 2026, the defendant Lenox Hill Hospital shall produce Alison Lace, or another employee with knowledge of the formulation, interpretation, and enforcement of that defendant's rules regarding the signing of chart entries, for a deposition limited to 90 minutes, and limited to issues concerning the general protocols for the enforcement of those rules, except that the plaintiffs are precluded from questioning Alison Lace or any such other employee concerning the potential liability of the defendants Lenox Hill Hospital, Northwell Healthcare, Inc., Northwell Health, Inc., Frankie Hamilton, R.N., Andrew Sawires, M.D., Daniel Murray, M.D., Troy Wang, P.A., Amanda Testani, P.A., Courtney McNulty, P.A., Alison Panosian, M.D., Matthew J. Anderson, M.D., Mikail Koroma, M.D., Steven Mandel, M.D., Bushra Mina, M.D., Ira Wagner, M.D., and Marcel Bas, M.D., for inscribing or allowing the inscription of improper signatures on

medical records, or whether the practice of those defendants' or their employees otherwise allowing such other healthcare personnel improperly to sign a chart may shift or obscure accountability for negligent conduct, and the plaintiffs' motion is otherwise denied as academic; and it is further,

ORDERED that the cross motion of the defendants Lenox Hill Hospital, Northwell Healthcare, Inc., Northwell Health, Inc., Frankie Hamilton, R.N., Andrew Sawires, M.D., Daniel Murray, M.D., Troy Wang, P.A., Amanda Testani, P.A., Courtney McNulty, P.A., Alison Panosian, M.D., Matthew J. Anderson, M.D., Mikail Koroma, M.D., Steven Mandel, M.D., Bushra Mina, M.D., Ira Wagner, M.D., and Marcel Bas, M.D., for a protective order is denied as academic.

This constitutes the Decision and Order of the court.

1/26/2026
DATE

JOHN J. KELLEY, J.S.C.

MOTION:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**
CROSS MOTION:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED	**X**	**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**