

De La Rosa v New York & Presbyt. Hosp.

2026 NY Slip Op 31611(U)

April 16, 2026

Supreme Court, New York County

Docket Number: Index No. 805354/2017

Judge: Kathy J. King

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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. KATHY J. KING

PART 06

Justice

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ANNETTE DE LA ROSA, and THE ESTATE OF ROZ DE LA ROSA,

INDEX NO. 805354/2017

Plaintiff,

- v -

ORDER

THE NEW YORK AND PRESBYTERIAN HOSPITAL, NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC., PARUL SHUKLA, ALESHA PENNANT, PATRICIA KALNBERG,

Defendants.

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In this medical malpractice and wrongful death action, Plaintiff moves for an order (1) compelling Defendants to produce audit trails for 37 specified days of admission and (2) compelling the continued deposition of non-party witness Dr. Jeffrey Milsom. For the reasons set forth below, the Court decides as follows:

Plaintiff’s application to compel the production of audit trails for the decedent’s 37 days of admission is granted pursuant to CPLR 3101(a), as the requested disclosure is material and necessary to the prosecution of this action (*see Forman v Henkin*, 30 NY3d 656, 661 [2018]; *Vargas v Lee*, 170 AD3d 1073, 1076 [2d Dept 2019]). Although Defendants oppose the demand as a “fishing expedition,” the Court finds that the electronic audit trails for the specified periods—August 17 to 29, 2015; November 20 to 26, 2015; December 6 to 15, 2015; December 16 to 20, 2015; and June 24 to 30, 2016—may yield relevant evidence regarding the timing of care, the identity of providers, and the contemporaneous nature of the entries. Given the sharp factual dispute between the testimony of Dr. Shukla and the Plaintiff-widow concerning the hospital’s notice of the decedent’s suicidal history, these audit trails are essential to determine when

OTHER ORDER – NON-MOTION

psychiatric consultations were entered or if records were modified following the decedent's elopement and suicide. Plaintiff has laid a sufficient foundation for this discovery, and the production of a limited 37-day window is not unduly burdensome in the modern EMR era (*Laitmon v Amsterdam Nursing Home Corp.*, 2025 NY Slip Op 32812(U) (Sup Ct, NY County 2025)).

With respect to the continued deposition of non-party witness Dr. Jeffrey Milsom, Plaintiff has demonstrated that the prior proceeding was prematurely terminated by defense counsel without a sufficient legal basis. While Defendants assert the deposition was "busted" to protect privileged Quality Assurance (QA) information, the record reflects that defense counsel's conduct—including directing the witness not to answer questions regarding non-privileged hospital protocols and unilaterally ending the session despite the witness's stated availability—impeded Plaintiff's right to full disclosure of material facts (see 22 NYCRR 221.1; 221.2). Although the Court recognizes the statutory protections afforded to formal peer review and morbidity and mortality conferences under Education Law § 6527(3) and Public Health Law § 2805-m, such privileges do not shield a witness's personal knowledge of the facts of the decedent's care or the existence of general departmental policies. Accordingly, to ensure the orderly completion of this discovery and to resolve persistent disputes regarding the boundaries of the QA privilege in real-time, the continued deposition shall be conducted under the supervision of a Special Referee pursuant to CPLR 3104.

Accordingly, it is hereby

ORDERED that Defendants shall produce the requested audit trails within thirty (30) days of this Order; and it is further

ORDERED that the continued deposition of Dr. Jeffrey Milsom shall be conducted under the supervision of a Special Referee (or Judicial Hearing Officer) to be designated by the Special Masters Office; and it is further

ORDERED that the Special Referee shall have the authority to rule on all objections raised during the deposition, including but not limited to those based on New York State Education Law § 6527 and Public Health Law § 2805-m, to ensure the proceeding is conducted in an efficient and non-obstructive manner; and it is further

ORDERED that the continued deposition of non-party witness Dr. Jeffrey Milsom shall be limited to a duration not to exceed two (2) hours of active testimony; and it is further

ORDERED that any time expended for the purpose of obtaining rulings from the Special Referee, or for any administrative interruptions, shall not be included in the calculation of the two-hour limit.

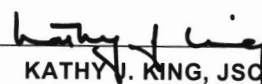
ORDERED that the costs of the Special Referee, if any, shall be borne equally by the parties; and it is further

ORDERED that the parties shall contact the Special Masters Office within ten (10) days of this Order to schedule the supervised deposition; and it is further

ORDERED that Plaintiff's Counsel shall, within 15 days from the date of this Order, serve a copy of this Order with Notice of Entry, together with a completed Information Sheet, upon the Defendants' Counsel and the Special Referee Clerk; and it is further

This constitutes the Decision and Order of the Court.

DATE: 4/16/2026


KATHY V. KING, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)