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**SUPREME COURT - STATE OF NEW YORK**

PRESENT: HON. R. BRUCE COZZENS, JR.

Justice.

TRIAL/IAS PART 4  
NASSAU COUNTY

DANIEL STAIANO and BARBARA STAIANO,  
as Co-Administrators of the Estate of PHILIP  
JOHN STAIANO, deceased,

Plaintiff(s),

-against-

CHRISTOPHER GEE, M.D.; PHYSICIANS CARE OF  
LONG ISLAND, P.C., ROSE W. TSE, M.D., CARDIAC  
CARE, P.C., CARDIOVASCULAR DIAGNOSTIC  
SERVICES, P.C., PLAINVIEW HOSPITAL, GERARD  
BROGAN, M.D., ALAN I. KAPLAN, M.D., MICHAEL  
CONWAY, D.P.M. and MASSAPEQUA FOOT CARE,  
Defendant(s).

MOTION #013,014  
INDEX #9423/2009  
MOTION DATE:  
April 20, 2012

The following papers read on this motion:

Notice of Motion.....1  
Notice of Cross Motion.....1  
Reply Affirmation.....1

Upon the foregoing papers, it is ordered that plaintiff's motion to compel the depositions of defendant Plainview Hospital's employees Peter Moleski, M.D., and Matthew Projansky, M.D., it determined as hereinafter set forth.

In this medical malpractice action, plaintiffs Daniel and Barbara Staiano, on behalf of the Estate of their late son Philip John Staiano ("decendent"), and individually, seek damages because of the negligence of the defendants in failing to properly diagnose their son's deep vein thrombosis that resulted in a pulmonary embolism. On January 14, 2009, decedent presented to the Plainview Hospital Emergency Department at 10:29 p.m. It is undisputed that Dr. Kaplan arrived and treated the plaintiff in the emergency department at 11:00 p.m. In dispute is whether another physician treated the plaintiff within the thirty-one minute gap between decedent's arrival and Dr. Kaplan's arrival to the emergency department.

As such, Plaintiff has moved, pursuant to CPLR §3124, to compel the depositions of Plainview Hospital employees, Peter Moleski, D.O., Matthew Projansky, M.D. and Dave Tran. Consequently, defendant, Plainview Hospital, has cross- moved for a protective order, pursuant to CPLR §3101(a) and CPLR §3103, denying plaintiff's demands for the requested depositions.

Plaintiffs, in support of their motion, contend that a different doctor must have attended to the decedent before Dr. Kaplan's shift began. In support of that contention, plaintiffs rely on the

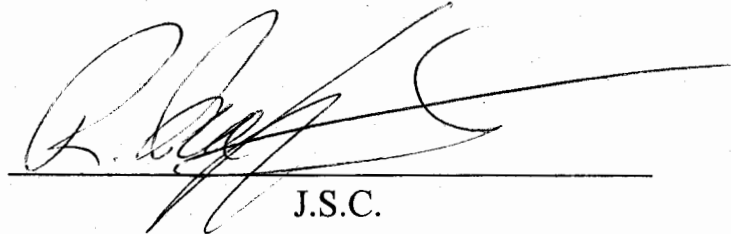
deposition transcript of Mrs. Staiano, who testified that she believed Dr. Edward Brogan attended to the decedent. However, Dr. Brogan testified that he did not ever treat the decedent, although Mrs. Staiano identified him and the fact that his name appeared on decedent's medical records. Dr. Brogan's testimony is bolstered by the emergency room schedule, which noted that Dr. Molseki, Dr. Projansky, and Dr. Tran were the only physicians present prior to the arrival of Dr. Kaplan. As such, plaintiffs argue that the requested depositions are necessary to determine who treated the decedent prior to Dr. Kaplan's arrival.

Defendant, in opposition to plaintiffs' motion, has submitted the following: (1) The deposition testimony of Dr. Kaplan stating that he was the first physician to treat the decedent and that Dr. Brogan's name appears on medical records via computer glitch; (2) The ER nurse's notes showing the presence of Dr. Kaplan, and not Dr. Brogan or some other unidentified physician; and (3) the affidavits from Dr. Peter Moleski and Dr. Matthew Projansky stating that they did not treat the decedent or talk to any of decedent's family members.

"Pursuant to CPLR 3101 [a], 'full disclosure of all matter material and necessary in the prosecution or defense of an action' is required. The phrase 'material and necessary' should be 'interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay prolixity. The test is one of usefulness and reason' (*Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406, 288 NYS2d 449, 235 NE2d 430; see *Andon v 302-3-4 Mott St. Assoc.*, 94 NY2d 740, 746, 709 NYS2d 873, 731 NE2d 589). While the disclosure provisions of the CPLR are ordinarily to be construed liberally, 'the scope of permissible discovery is not entirely unlimited and the trial court is invested with broad discretion to supervise discovery and to determine what is "material and necessary"' as that phrase is used in CPLR 3103 [a]' (*NBT Bancorp v Fleet/Norstar Fin. Group*, 192 AD2d 1032, 597 NYS2d 236)." *Auerbach v Klein*, 30 AD2d 451, 816 NYS2d 376.

In the instant matter, the Court finds plaintiffs' request for the depositions of Dr. Moleski and Dr. Projansky to not be material or necessary to the prosecution of this action. As such, the plaintiffs' motion is denied; the defendants' motion is granted.

Dated: **AUG 02 2012**

  
J.S.C.

**ENTERED**  
AUG 03 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE