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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**BRIAN WOODYARD,
Plaintiff,**

**-against-
BARUCH TOLEDANO, M.D., BARUCH
TOLEDANO, M.D., P.C. and ORTHOPAEDIC
ASSOCIATES OF GREAT NECK, LLP,
Defendants.**

**INDEX NO: 601056/08
Action #1**

**BRIAN WOODYARD,
Plaintiff,**

**-against-
PETER SALZER, M.D., PETER ALAN SALZER,
M.D., JOHN HOINA, DPM and LONG ISLAND
HYPERBARIC AND WOUND CARE ASSOCIATES
AT PLAINVIEW HOSPITAL,
Defendants.**

**Motion Sequence #1
Submitted July 15, 2009
INDEX NO: 600328/09
Action #2**

The following papers were read on this motion:

Notice of Motion.....1

Counsel for plaintiff in Action #1 and Action #2, BRIAN WOODYARD, moves for an order, pursuant to CPLR §602, consolidating Action #1 for all purposes with Action #2, amending the caption and continuing all proceedings under the Action #2 Index Number, 600328/09. An Affidavit of Service reflects service on counsel for all parties in both actions, but no papers are submitted in opposition to the motion. Indeed, annexed as

Exhibit "A" is a Stipulation Consolidating Actions #1 and #2 signed by all parties. The motion is determined as follows:

Counsel for plaintiff relates he is alleging medical malpractice against the defendants in Action #1 and Action #2 , and seeks to recover monetary damages pursuant to his claim that defendants failed to timely and properly treat plaintiff's infection resulting in a below the knee amputation. Counsel for plaintiff states that, on May 20, 2007, plaintiff was admitted to Nassau University Medical Center for a Grade III ankle fracture/dislocation, and underwent surgery to repair the right ankle, performed by Dr. TOLEDANO. After plaintiff's discharge from the hospital, counsel states that Dr. TOLEDANO and his group, ORTHOPAEDIC ASSOCIATES OF GREAT NECK, LLP., continued to treat plaintiff through July 5, 2007. It appears that plaintiff was also treated by defendants, PETER SALZER M.D., PETER ALAN SALZER, M.D., PLLC, JOHN HOINA, DPM and LONG ISLAND HYPERBARIC AND WOUND CARE ASSOCIATES AT PLAINVIEW HOSPITAL. It is alleged that plaintiff remained under their care and treatment until July 5, 2007, when he was admitted to Winthrop Hospital and ultimately underwent a below knee amputation. Moving counsel contends that Action #1 and Action #2 arise out of the same occurrence, have the same questions of law and fact and that consolidation will conserve the resources of the Court, counsel and the witnesses.

CPLR §602 provides, as follows:

When actions involving common questions of law or fact are pending before the court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

After a careful reading of the submission herein, it is the judgment of the Court that consolidation of Action #1 into Action #2 is appropriate. The Court has discussed the instant motion with the chambers of Justice Woodard, to whom Action #1 has been assigned, and it is agreed that consolidation of both actions under Index Number 600328/09 is appropriate. Therefore, it is hereby

ORDERED, that plaintiff's motion for consolidation of Action #1 and Action #2 is granted, on consent, for all purposes, under Index Number 600328/09, and all further proceedings shall be had before Justice William R. LaMarca; and it is further

ORDERED, that the caption shall henceforth read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

BRIAN WOODYARD,

Plaintiff,

-against-

INDEX NO: 600328/09

**BARUCH TOLEDANO, M.D., BARUCH
TOLEDANO, M.D., P.C. and ORTHOPAEDIC
ASSOCIATES OF GREAT NECK, LLP,
PETER SALZER, M.D., PETER ALAN SALZER,
M.D., JOHN HOINA, DPM and LONG ISLAND
HYPERBARIC AND WOUND CARE ASSOCIATES
AT PLAINVIEW HOSPITAL,
Defendants.**

and it is further

ORDERED, that all counsel shall appear for a Conference in the consolidated action before the undersigned on September 15, 2009 at 9:30 A.M.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: July 20, 2009

ENTERED

JUL 28 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

WILLIAM R. LaMARCA, J.S.C.

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