

**SHORT FORM ORDER**

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

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Present:

**HON. BERNARD F. McCAFFREY**

Justice

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**TRIAL/IAS, PART 1  
NASSAU COUNTY**

**GUY VALERIOTI and PATRICIA VALERIOTI,**

**INDEX NO. 22201/99**

**Plaintiffs,**

**MOTION SUBMISSION  
DATE: 6/28/02**

**-against-**

**MOTION NO. 2**

**ALLEN D. EFRON, M.D., LONG ISLAND  
NEUROSURGICAL ASSOCIATES, P.C., RUTH  
SPECTOR, M.D. and LONG ISLAND JEWISH  
MEDICAL CENTER,**

**Defendants.**

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Plaintiffs' application, pursuant to CPLR §3124, to compel the defendants' production of operating room logs from Long Island Jewish Medical Center for purposes of identifying all procedures performed by Dr. Efron from 1995 to 1997, is determined as hereinafter provided.

During the examination before trial of defendant, Dr. Allen Efron, he was asked how many times he performed the subject glycerol injection procedure performed on the plaintiff. While Dr. Efron's initial response was that he did not recall, upon further questioning, he responded he had performed this procedure "definitely more than ten times" and that he could not say for sure if he had performed it more than twenty five times. The defendants claim Dr. Efron's response sufficiently establishes a numerical range for the number of times he performed the procedure.

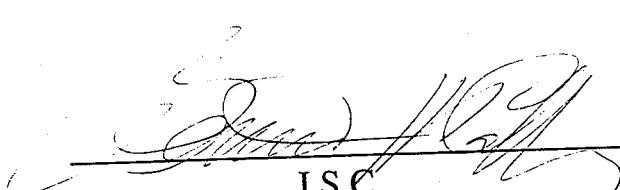
Plaintiffs contend the defendant doctor's answer was insufficiently responsive. They now ask the court to compel defendant, Long Island Jewish Medical Center, to produce their operating room logs for 1995-1997 to verify the number of glycerol injection procedures performed by Dr. Efron during this period of time prior to plaintiff's alleged injury. Said logs are expected to list the doctor's name, surgical procedure performed and the dates thereof.

Defendants argue the plaintiffs are on a "fishing expedition" in contravention of CPLR § 3120 and New York case law. (See, Palmieri vs. Kilcourse, 91 AD2d 657, 457 NYS2d 104). They claim Dr. Efron already responded to the question regarding his experience in performing the subject procedure by acknowledging he had performed it between ten but less than twenty five times in the five year period prior to performing this procedure on plaintiff Mr. Valeriotti. Defendants state plaintiffs' request to research through the operating room logs of Long Island Jewish Medical Center for purposes of identifying all medical procedures performed by Dr. Efron during the 1995-1997 period is overly broad and unreasonable, particularly where a responsive answer has been provided.

Given the fact that it is possible to adduce a numerical range for the number of times, Dr. Efron recalls having performed the subject surgical procedure, plaintiffs have failed to identify a factual issue for which the additional information they might obtain from the hospital's operating room and logs would be relevant, material and necessary. There has been no suggestion by plaintiffs that they have any reason to believe the subject procedure was never previously performed by Dr. Efron. The instant application appears to be overly broad and burdensome for the type of information sought.

Accordingly, plaintiff's application pursuant to CPLR §3124, for an order of this court compelling the production of Long Island Jewish Medical Center's operating room logs for the period 1995-1997 is denied.

Dated: SEP 18 2002

  
J.S.C.

**ENTERED**

SEP 26 2002

NASSAU COUNTY  
COUNTY CLERK'S OFFICE