IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL

MEIBEL SABOYA DIAZ,
PLAINTIFF,

VS.

Case No: 2023 CA 000499

SEAWORLD PARKS & ENTERTAINMENT LLC D/B/A BUSCH GARDENS,

DEFENDANT.

_____/

OBJECTION TO NOTICE OF PRODUCTION FROM NON-PARTY TO ALL THIRD PARTIES LISTED IN THE NOTICE DATED 5/22/23, MOTION FOR PROTECTIVE ORDER, AND MOTION TO QUASH SUBPOENAS NOTICED 5/22/23

Come(s) now Plaintiff(s), by and through the undersigned counsel, pursuant to Fla. R. Civ. Pro. 1.410 and related rules, and hereby file(s) this objection to the Defendant's Notice of Production Non-Party, dated May 22, 2023, and hereby objects to the third-party subpoenas directed to Plaintiff's various past medical providers, health insurance company, and non-relevant entities, and move(s) the Court for a protective order, and moves to quash the subpoenas, stating the grounds therefore as follows:

1. Defendant issued notices of subpoenas for the following third parties on May 22, 2023:

Department of Highway Safety & Motor Vehicles
Florida Department of Financial Services- Division of Workers' Compensation
CORA Health Services, Inc.
Laboratory Corporation of America
Sarasota Memorial Hospital
AMA Health Bayview Medical
Coastal Eye Institute
Florida Digestive Disease Specialists
Eye Care Associates of Sarasota

The Center for Skin Wellness
Florida Cancer Specialists
HCA Florida Sarasota Hospital
United Healthcare Services, Inc.

2. It is of utmost importance to understand the Plaintiff suffered a fracture to her patella (knee fracture) as a result of the fall alleged in the complaint, and she is not requesting damages for any other type of injury.
3. She is not claiming any other type of injury. She broke her knee- that is all.
4. Plaintiff has already responded to interrogatories clearly notifying the defendant of that position (See Snippets from Plaintiff's Response to Defendant's Interrogatories dated March 31, 2023:

INTERROGATORY NO. 4:

Describe each injury for which you are claiming damages in this case, specifying the part of your body that was injured, the nature of the injury and, as to any injuries you contend are permanent, the effects on you that you claim are permanent.

RESPONSE:
Objection to the extent that the defendant is attempting to input "permanency" as a requirement of recovering damages in a non-automobile collision case.
Other than that specific objection, Plaintiff responds as follows:

The medical records provided to Defendant show the full scope of the injuries and complaints to medical providers. Therefore, pursuant to Fla. R. Civ. P. 1.340(c), Plaintiff refers Defendant

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Medical:
The medical records generally show a knee fracture at the patella, and aggravation of knee pain and ongoing problems with the left knee as a result of the fall.

Redacted are the list of medical providers. For reference, the medical providers listed include some of the subpoenaed parties, including: Cora Health Services, Inc.; Laboratory Corporation of America; and Sarasota Memorial Hospital.

Plaintiff continues to discuss the injuries sustained in the fall in response to Interrogatory Question number 4, as follows:

> The swelling and pain has been ongoing and does not subside with regular therapy, as it would in the past. Plaintiff acknowledges that she is not a young woman and that some knee pain at her age is to be expected, but the fracture to the patella directly resulted from the fall and the continued pain has interfered with daily living. Plaintiff's daughter in law has been very supportive and has helped with living conditions.

5. It is clear that treatment related to the knee would be discoverable, but all of the other overreaching subpoenas would be a clear invasion of Plaintiff's Florida Constitutional Right to Privacy and the Florida Supreme Court's Constitutional Right to Privacy.
6. The subpoenas are overbroad and overreaching.
7. Plaintiff does not object to Defendant requesting limited records relating to knee treatment only from subpoenaed providers: Cora Health Services, Inc.; Laboratory Corporation of America; and Sarasota Memorial Hospital.
8. However, Plaintiff does object to Defendants' request for all other records in full listed in the subpoena.
9. The subpoenas are unreasonable and oppressive. See Fla. R. Civ. P. 1.410(c).
10. Furthermore, the subpoenas are too indefinite to permit an appropriate response. The law requires that the subpoena state with reasonable particularity the documents sought to be produced. *See Vann v. State*, 85 So. 2d 133, 136 (Fla. 1956).
11. It appears that Defendant wants all records ever made for Plaintiff.

12. Pursuant to Fla. R. Civ. P. 1.280(b)(1), information or materials that are not "reasonably calculated to lead to the discovery of admissible evidence" and are not "relevant" and not discoverable. Fla. R. Civ. P. 1.280(b)(1).

13. Records older than ten (10) years are too remote in time to be relevant or admissible.

14. This Court has "embrace[d] the Supreme Court's conclusion that litigants are not entitled to carte blanche discovery of irrelevant material." *Residence Inn by Marriott v. Cecile Resort, Ltd*., 822 So.2d 548, 550 (Fla. 5th DCA 2002). *See Allstate Ins. Co. v. Langston*, 655 So.2d 91, 94 (Fla.1995)(discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence).

15. Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. *Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co*., 629 So.2d 852, 854 (Fla. 1st DCA 1993). ("It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings."); Fla. R. Civ. P. 1.280(b)(1) (discovery must be relevant to the subject matter of the pending action).

16. The law requires that Defendant show a nexus or link between the incident in the complaint and the medical records requested, and in this case the Defendant has failed to show the nexus between the requested records and the fall outlined in the complaint. *See Mcenany v. Ryan*, October 6, 2010 (Fla. 4th DCA 2010).

17. A patient's medical records enjoy a confidential status by the right to privacy in Article I, section 23 of the Florida Constitution. *State v. Johnson*, 814 So.2d 390, 393 (Fla.2002). The trial court is charged with balancing the right to broad discovery against an individual's

competing privacy interests to prevent an undue invasion of privacy. *See Barker v. Barker*, 909 So.2d 333, 338 (Fla. 2d DCA 2005) (*citing Rasmussen v. S. Fla. Blood Serv., Inc.,* 500 So.2d 533, 535 (Fla.1987)). Certiorari may be appropriate where a discovery order compels disclosure of medical or other records that infringe upon a party's constitutional privacy rights. *See e.g., James v. Veneziano*, 98 So.3d 697 (Fla. 4th DCA 2012) (granting a certiorari petition and quashing the trial court's order that compelled discovery of 10 years' worth of medical records on the grounds that irreparable harm was established by the implication of the constitutionally-recognized right to privacy and the trial court departed from the essential requirements of law by requiring the immediate disclosure of the records without first conducting in camera review to determine relevancy).

18. An in-camera inspection of the records is necessary if a clear link or nexus is not shown by Defendant between the incident in the complaint and the medical record requested. *See Mcenany v. Ryan*, October 6, 2010, No. 4D02-2292(Fla. 4th DCA 2010). *Cf also Bergmann v. Freda*, 829 So.2d 966 (Fla. App., 2002)(requiring "link" between negligence and medical records in medical malpractice case.).

19. If the nexus is not shown, then the full extent to which the medical records are relevant can be determined only after the trial court examines the records in camera and allows the parties to argue relevance at a new hearing. *See James v. Veneziano*, 98 So.3d 697 (Fla. App., 2012); *Muller v. Wal-Mart Stores, Inc.,* 164 So.3d 748 (Fla. App., 2015).

20. Once the in-camera inspection and arguments on relevancy occur, the trial court's order must also provide for only limited access to the records disclosed so as to protect the petitioner's constitutional and statutory rights to privacy of the records. *See also Estate of Carrillo v. F.D.I.C.*, 2012 WL 1831596, at *4 (S.D.Fla.2012).

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