



SJC

CALENDAR #: 10  
REVIEWED BY: RK

PC: 5-22-17  
CC: 9-19-17  
NI: 4/6/18  
(NI TO BE ENTERED BY COURT)

Supreme Court of the State of New York  
Queens County: Compliance Settlement and Conference Part  
Present: Hon. Joseph J. Esposito, Justice

Juan Henao et al  
Plaintiff(s)  
- against -  
James Fitzpatrick et al  
Defendant(s)

Index Number: 705 208/16  
Date RJI filed: 10-7-16

FILED  
SEP 28 2017  
COUNTY CLERK  
QUEENS COUNTY

Compliance Conference Order

Appearances:  
Plaintiff(s) Napoli by C. blood  
Defendant(s) Wade Clark Mulcahy LLP by ISTONYLO BRUNO FIZPATRICK  
MCADPC CON BOYD by MICHAEL FITZPATRICK  
Lewis John Avallone Aviles by Teresa M.C. Myers

Upon the Preliminary Conference Order dated 5-22-17, and following a Compliance Conference held on 9-19-17, and it appearing that disclosure previously ordered herein has not been completed, or that additional disclosure is warranted, it is hereby

**ORDERED that all pending discovery-related motions shall be brought to the attention of this Court**  
**ORDERED that any items of discovery left outstanding from those directed by prior orders must be specifically identified or are deemed waived, and it is further**  
**ORDERED that disclosure shall proceed and be completed in accordance herewith, and it is further**  
**ORDERED that all proceedings directed herein shall be completed on or before the dates set forth. No adjournments of the dates set forth herein are to be had without the Court's written approval, and it is further**  
**ORDERED that any failure to comply strictly with the terms of this order shall be grounds for the striking of pleadings or other relief pursuant to CPLR 3126.**

DOCUMENTS, AUTHORIZATIONS and OTHER DISCOVERY AND INSPECTION, it is ORDERED that no later than 20 days from the date hereof, the following documents, authorizations and other items for discovery and inspection shall be produced:

by the Plaintiff(s): All medical reports and authorizations, as directed by 22 NYCRR § 202.17 (b) and, where the cause of death is in issue, as directed by 22 NYCRR § 202.17 (d).

BE responsive to Margaret Fitzpatrick demand dated 4/20/17; death certificate + letters of Administration to accompany ALL AZS; AZS for employment + W-2s of years pre DOL - present; primary care physician 2 years pre DOL. ALL AZS to have all boxes checked. Full name of witness Courtney Martin w last known address to extent known by the Defendant(s) and Third-Party Defendant(s):

to extent not provided

serve to serve certified copy of insurance policy w/in 30 days

DEPOSITIONS:

ORDERED that all parties not yet deposed shall appear for deposition(s) on: date 1/9/2018 at time TBD o'clock at: place TBD

(The date set for depositions MUST be no more than 30 days from the date hereof. Insert any further provisions regarding depositions) Margaret Fitzpatrick + A Servpro 1/16/18 TPA Cystre 1/23/18

and it is further ORDERED that depositions shall continue from day to day until completed.

PHYSICAL EXAMINATIONS:

ORDERED that all defendants and other parties desiring to take the physical examination of any plaintiff shall designate, in writing, the physician(s) to take such examination within 15 days of the completion of the plaintiff's deposition, or within 20 days of the date hereof in the event plaintiff's deposition has already occurred. All physical examinations shall be completed within 30 days of the designation of examining physician(s). Pursuant to 22 NYCRR § 202.17 [c], copies of the reports of the examining physician(s) shall be served on all parties within 45 days after the completion of the examination, and it is further

ORDERED: (Insert any further provisions regarding physical examinations)

MISCELLANEOUS:

ORDERED that unless otherwise noted by the court herein, this Order is deemed to have resolved any pending discovery motion(s), and that pursuant to this Order, such motion shall be "marked off" in the Centralized Motion Part (CMP) on the return date of the motion; and it is

ORDERED that any further third-party actions shall be commenced promptly upon discovery of the identity of the third-party defendant(s), but not more than 30 days after the completion of

depositions, unless for good cause shown, and it is further

**ORDERED** that parties aggrieved by failures to disclose must move promptly for relief or be deemed to have waived the outstanding discovery, and it is further

**ORDERED** that any statutory stays of disclosure due to the pendency of motions pursuant to CPLR 3211, 3212 and 3213 are vacated, and all parties are stayed from moving for summary judgment pending the filing of a note of issue as directed herein, and it is

**ORDERED** that if plaintiff is a Medicare recipient or Medicare eligible, he/she shall within 30 days provide defendant with copies of all correspondence to Medicare, as evidence of plaintiff's efforts to determine the outstanding claim against said plaintiff/beneficiary should one exist, e.g. final demand or conditional summary from CMS; and it is further

**ORDERED** that any parties failing to appear at this Compliance Conference shall be bound by the terms of this order, and it is further

**ORDERED** that plaintiff(s) shall provide fresh HIPAA-compliant authorizations for release of medical records, not later than 60 days prior to trial, and is further

**ORDERED** as follows:

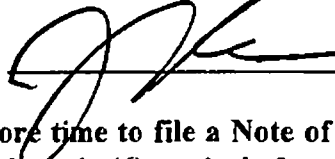
~~All parties to respond to outstanding discovery w/in 30 days~~

Any items left outstanding from those directed by prior orders must be specifically identified herein or are deemed waived)

**ORDERED** that plaintiff/ II shall serve and file a Note of Issue and Certificate of Readiness on or before (Court use only) 4/16/18 and shall furnish to the Compliance Settlement and Conference Part within ten (10) days thereafter a copy of the filed Note of Issue and Certificate of Readiness, together with an affidavit of service, and that the failure to do so shall be grounds for the imposition of sanctions.

SO ORDERED:

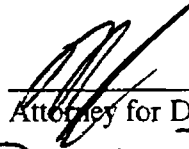
Dated: 9-17-17

, JSC


Should plaintiff/ II need more time to file a Note of Issue, said party may contact chambers at (718) 298-1089, no later than six (6) weeks before the Note of Issue is due.

Appearances and acknowledgment of receipt of this Order:

Nancy G. Cvetkoff  
Attorney for Plaintiff

  
Attorney for Defendant Schiff

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Attorney for Defendant

  
Attorney for Defendant WAA  
TPD Crystal Scott

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Attorney for Defendant