

Meyer v Staten Is. Univ. Hosp.

2011 NY Slip Op 33326(U)

October 19, 2011

Supreme Court, Richmond County

Docket Number: 100786/09

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No. 100786/09
Motion No.: 3**

JILL MEYER, M.D.

Plaintiff

DECISION & ORDER

against

HON. JOSEPH J. MALTESE

**STATEN ISLAND UNIVERSITY HOSPITAL; and
MICHAEL LEVY, M.D.**

Defendants

The following items were considered in the review of the following motion for a protective order:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Memorandum of Law	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Protective Order is as follows:

The non-parties Montefiore Medical Center (“Montefiore”) and Carlos Rueda, M.D. (“Dr. Rueda”), Chief of Psychiatry at Montefiore, move for a protective order barring the plaintiff, Jill Meyer, M.D. (“Dr. Meyer”) from obtaining information pertaining to her application for privileges at Montefiore, and information regarding the Dr. Meyer’s credentialing file through a non-party deposition of Dr. Rueda. The motion is granted.

Facts

Staten Island University Hospital (“SIUH”) employed the plaintiff as a psychiatrist on June 24, 2008. On October 28, 2008, the plaintiff entered into an agreement with SIUH whereby she resigned her position with the hospital effective on September 21, 2008. The agreement stated that the plaintiff would not be eligible to reapply for privileges and staff membership when her appointment expired on or about June 24, 2010. In response to third party inquiries, SIUH was

required to respond only with the information that:

Dr. Meyer was appointed to the Medical Staff of SIUH on June 24, 2008. Dr. Meyer resigned from her employment effective September 21, 2008 [and her medical staff membership and privileges lapsed on June xx, 2010, when she did not reapply.

To the best of our knowledge and belief, the following information is correct as it pertains to the above referenced practitioner: ...

4. Information which is required to be reported by hospital pursuant to Section 2803-e of the New York State Public Health Law? NO [*sic*].

5. Resignation or withdrawal of association or privileges, voluntary or involuntary, to avoid the imposition of disciplinary measures at this institution? NO [*sic*].

6. Suspension, curtailment, restriction or termination of privileges or employment at this institution? NO [*sic*].

This agreement between SIUH and the plaintiff also states:

Accordingly, Employee and Hospital shall not disclose the terms and conditions of this Agreement to any person or entity without the prior written consent of the other party to this Agreement, except (i) as may be necessary for the purposes of enforcing this Agreement; (ii) *if required by law*; and (ii) to Employee's financial or tax advisor, attorney and spouse ... [*emphasis added*]

After leaving SIUH, the plaintiff sought employment with Montefiore. The plaintiff alleges that on October 1, 2008 she was told by Dr. Rueda that she would have a job, subject to review of her credentials. According to the plaintiff, an assurance of employment followed again on November 20, 2008 but she was told that processing would take another one or two weeks. As part of the process, Montefiore reached out for further information from SIUH, and specifically spoke to Michael Levy, M.D., then Chairman of the Department of Psychiatry at SIUH. Dr. Levy passed away during the course of this litigation and is unavailable to give testimony.

The plaintiff signed an Applicant's Affidavit with Montefiore that states in part, "I authorize investigation of all matters contained in this application..." After Dr. Rueda spoke with Dr. Levy, on December 5, 2008, the plaintiff alleges that Dr. Rueda advised her to withdraw her application for employment at Montefiore. On December 9, 2008, Dr. Rueda and Montefiore formally withdrew the offer to the plaintiff of employment. The plaintiff alleges this withdrawal was due to Dr. Levy's evaluation of the plaintiff given to Dr. Rueda.. The plaintiff previously moved to

obtain written records from Montefiore pertaining to the pre-employment quality assurance process. However, those written records were deemed privileged because they were quality assurance documents. Next, the plaintiff demanded the deposition of Dr. Rueda regarding his conversation with Dr. Levy. Montefiore and Dr. Rueda move for a protective order.

Discussion

The underlying action is for breach of contract, tortious interference and defamation of character. To further the plaintiff's cause of action for defamation of character, the plaintiff has demanded that the evaluation supplied by SIUH and Dr. Levy to Dr. Rueda be disclosed to her. Montefiore and Dr. Rueda oppose that demand by moving for a protective order claiming privilege pursuant to Public Health Law § 2805-m, which states in part:

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person, partnership, corporation, firm, society, or other entity on account of the communication of information in the possession of such person or entity, or on account of any recommendation or evaluation, regarding the qualifications, fitness, or professional conduct or practices of a physician, to any governmental agency, medical or specialists society, or hospital as required by sections twenty-eight hundred five-j, twenty-eight hundred five-k and twenty-eight hundred five-l of this article or any incident reporting requirements imposed upon diagnostic and treatment centers pursuant to the provisions of this chapter.¹

In legislating quality assurance processes, the intent of the New York Legislature was to positively influence reform of the legal process of medical malpractice, and to maintain high quality medical services.² Some form of relief from liability for participants in, and for the privilege of the records of the quality assurance process is specified under four laws.³ Therefore, the legislature manifested a strong desire that the quality assurance process be unfettered from unreasonable intrusion by parties outside the process.

¹Public Health Law § 2805-m (3).

²New York Laws 1985, ch 294, § 1, July 1, 1985.

³Public Health Laws §§ 2805-j (2), 2805-k (4), and 2805-m; and Education Law § 6527 (3).

By law, in response to a query from another hospital, a hospital is required to provide “the reasons for suspension, termination or curtailment of privileges at the hospital” and is not liable if compliance is good faith.⁴ Thus, when giving a recommendation or evaluation pursuant to a valid request, there can be no liability unless the information is both untrue and maliciously intended.⁵ Information given in good faith that is true or not maliciously given shields a person or entity from monetary liability and causes of action for damages when given in response to a hospital evaluating a physician for employment or privileges.⁶ Therefore, the information given to Dr. Rueda by Dr. Levy is not actionable if it was either truthful or not malicious. Here, the plaintiff bears the burden of showing that Dr. Levy’s statements to Dr. Rueda were both false and malicious.⁷ The plaintiff states that Dr. Levy’s statements were untrue and malicious. However, the plaintiff offered only the unfounded conclusory assertion, without anything more.

The plaintiff alleges that Dr. Rueda defined Dr. Levy’s statements as “the worst possible recommendation”. By itself, providing the worst possible recommendation is inadequate to make SIUH and Dr. Levy liable to the plaintiff, despite the plaintiff’s entirely conclusory allegations that Dr. Levy’s statements were false and malicious. Further, the legislature intended strong safeguards for the integrity of the quality assurance process and the free expression of honest evaluations required to protect the public from low-quality medical providers. Therefore, there are no grounds to breach the privileges intended by the law.

⁴Public Health Law § 2805-k (4).

⁵NY Education Law § 6527 (5).

⁶Public Health Law § 2805-j (2).

⁷*Sithian v Spence*, 283 AD 2d 566 [2d Dept 2006].

Accordingly, it is hereby:

ORDERED, that the non-parties Montefiore Medical Center and Carlos Rueda, M.D., are granted a protective order barring the plaintiff, Jill Meyer, M.D. from deposing Carlos Rueda, M.D. in order to obtain privileged information regarding the plaintiff's application for employment and privileges at Montefiore Medical Center; and it is further

ORDERED; that the parties Jill Meyer, M.D., Staten Island University Hospital, and Michael Levy, M.D. return for a conference at **DCM Part 3, 130 Stuyvesant Place, Third Floor** on **Wednesday, November 30, 2011 at 11:30 AM.**

ENTER,

DATED: October 19, 2011

Joseph J. Maltese
Justice of the Supreme Court