

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BEVERLY CALDWELL,	: NO. 08 - 00,805
Plaintiff	:
vs.	:
	: CIVIL ACTION - LAW
SUSAN A. BRANTON, M.D., THE WILLIAMSPORT	:
HOSPITAL AND MEDICAL CENTER, SUSQUEHANNA	:
HEALTH SYSTEM, SUSQUEHANNA PHYSICIAN SERVICES,:	:
and SUSQUEHANNA REGIONAL HEALTHCARE ALLIANCE,:	:
Defendants	: Motions to Compel

OPINION AND ORDER

Before the Court are two motions to compel, filed by Plaintiff on June 16, 2009, and July 13, 2009. Argument was heard July 29, 2009, at which time counsel requested the opportunity to brief the matter further. A brief was filed by Defendants on August 18, 2009, and by Plaintiff on August 28, 2009.

Plaintiff's claims against Dr. Branton and the Hospital and Health System revolve around allegations that her left ureter was injured during surgery performed by Dr. Branton and that a misread CT scan contributed to delay in diagnosing the injury, which caused further injury.¹ In the motion filed June 16, 2009, Plaintiff seeks to compel the further deposition of Dr. Patel because his counsel objected to certain lines of questioning at his initial deposition on May 28, 2009. Similarly, because counsel objected to certain questions at the deposition of Dr. Reilly, who was called in as a consulting urologist subsequent to the treatment provided by Drs. Branton and Patel, the motion filed July 13, 2009, seeks further deposition testimony from Dr. Reilly. Dr. Reilly is not a party, and is not alleged to have provided negligent care.

Neither Dr. Patel nor Dr. Reilly will testify as an expert witness at trial.² Dr. Reilly was asked whether he now believes anything in his consult report was incorrect, based on anything he may have learned since his consultation. His counsel indicated he would allow Dr. Reilly to answer only if the question was limited to information he had during the consultation. The

¹ It is alleged that the Hospital and Health System are vicariously liable for the actions of Dr. Patel, who is alleged to have misread the CT scan. Dr. Patel is not a named defendant.

Court believes this limitation is appropriate. Since Dr. Reilly is not going to testify as an expert witness, his opinions now, based on information he may not have had at the time of his consult, are not relevant. Similarly, Dr. Patel was asked to review the CT scan he had previously reviewed and provide an interpretation at this time. This question was objected to as irrelevant and, again, the Court agrees. Dr. Patel will not be providing testimony as an expert witness and thus only his opinion of what the CT scan showed at the time of his original interpretation is relevant. Plaintiff's argument that at the very least such questions should be allowed to show Dr. Patel's ability to read the scans, and therefore his credibility as a witness, has no merit: interpretation of the scans is a matter for expert opinion and cannot be considered "factual" such as would provide a basis for judging credibility.

Accordingly, the Court will enter the following:

ORDER

AND NOW, this 4th day of September 2009, for the foregoing reasons, the motions to compel are hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Clifford A. Rieders, Esq.
Richard F. Schluter, Esq.
C. Edward S. Mitchell, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

² While Plaintiff makes much of the fact that this was not definitively stated until the instant motions were filed, the Court believes the timing of the statement is not important to the disposition of the motions.