

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT FRANK AVELLINO'S MOTION FOR PROTECTIVE
ORDER REGARDING HIS DEPOSITION**

Defendant, Frank Avellino ("Avellino"), by and through his undersigned counsel, files this motion for a protective order rescheduling his deposition and as grounds therefor states as follows:

1. Defendant, Avellino's deposition is presently scheduled for July 16, 2015.
2. Defendant Avellino is not able to be deposed as scheduled due to a series of medical issues that are presently being addressed by his doctors in New York.
3. Defendant Avellino's deposition was previously scheduled for June 9, 2015, at which time he was experiencing severe pain and inflammation in his jaw, requiring him to travel to New York for treatment. Plaintiffs' counsel refused to reschedule the deposition requiring the filing of a motion for protective order which resulted in this Court's order requiring the deposition to be conducted within thirty days or upon agreement of counsel. The parties agreed upon July 16, 2015, for the deposition of Avellino and July 17, 2015 for the deposition of Defendant, Michael Bienes.

4. Undersigned counsel has been out of the country on vacation and returned to the office on July 13, 2015, at which time he learned that Avellino is still subject to physicians' care in New York and is unable to attend his deposition on July 16, 2015.

5. The treatment of Avellino's jaw is complicated by the fact that he had cancer in his jaw that resulted in the removal of a portion of his jaw and subsequent neutron radiation treatment. Such treatment can cause bone to die which affects the ability to heal from what might otherwise be routine dental work. See Letter from Dr. Jeffrey R. Levenson, dated July 1, 2015, attached hereto as Exhibit "A".

6. As evidenced by Dr. Levenson's letter, Dr. Todd Berman performed an extraction on June 9, 2015. Further work is necessary by Dr. Levenson which cannot be conducted until Avellino is cleared for such further procedure by Dr. Berman. Avellino saw Dr. Berman on July 13, 2015 and was cleared for the further work. Avellino scheduled such further procedure for July 16, 2015, the first available date.

7. While these procedures were going forward, Avellino experienced shortness of breath and a below normal heart beat. Avellino visited his cardiologist which resulted in four days of hospitalization and the installment of a pacemaker. See Letter from Dr. Danielle N. Nicolo, dated June 25, 2015, attached hereto as Exhibit "B".

8. Avellino is 78 years old and has experienced other serious medical issues including aortic valve replacement. While a full recovery of his current medical issues is expected within the next several weeks, Avellino's past medical history dictates the close supervision by his treating doctors in New York for his present issues.

9. The undersigned counsel has requested that Plaintiffs' counsel reschedule Avellino's deposition, and has advised Plaintiffs' counsel that Defendant Avellino is available

for deposition at any time during the months of August and September. However, to date Plaintiffs' counsel has not agreed to reschedule the deposition.

10. There is no prejudice to moving the date of Avellino's deposition. This action has been at issue for only several months and there remains ample time to conduct the deposition before the proposed discovery cutoff date in October.

WHEREFORE Defendant Frank Avellino respectfully requests that this Court enter an order granting his Motion for Protective Order to reschedule his deposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 14th day of July, 2015.

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Jeffrey R Levenson D.D.S LLP
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July 1, 2015

To whom it may concern:

Mr. Frank Avellino has been a patient of mine since the year 2000, when he was referred to me for treatment in advance of neutron radiation for parotid gland cancer at the University of Washington, in Seattle.

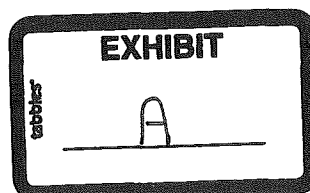
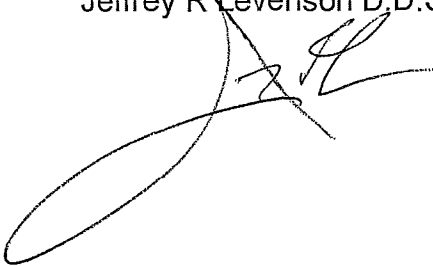
Recently Mr. Avellino has seen me for an infection in his right maxillary jaw. I referred him to Dr. Todd J. Berman who saw Mr. Avellino for a consultation on May 21, 2015. Dr. Berman performed a surgical extraction, a bone replacement graft ridge and cut the then existing bridge on June 9, 2015.

Mr. Avellino saw Dr. Berman on June 16, 2015 for his first follow up but was unable to see Dr. Berman for the 2nd follow up on June 23, 2015, as Mr. Avellino was in hospital.

I cannot begin my dental work of installing a permanent bridge in Mr. Avellino's jaw until he is cleared by Dr. Berman, who is currently on holiday. Mr. Avellino has an appointment with Dr. Berman on July, 13, 2015, after which I will hopefully be able to begin my work if approved by Dr. Berman.

Any infection and subsequent surgery after a patient has had radiation therapy is potentially dangerous due to a high incidence of osteomyelitis. The patient needs to be monitored closely.

Thank you for your consideration,
Jeffrey R Levenson D.D.S. LLP





Weill Cornell Physicians

New York-Presbyterian
Weill Cornell Medical Center

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New York, NY 10065

June 25, 2015

To whom this may concern:

This letter is to document that Mr. Frank Avellino (DOB 6/25/36) is a patient under my care for cardiac disease. He was admitted to New York Presbyterian Hospital from 6/19-6/23/15 after an abnormal stress test and had a dual chamber pacemaker placed during this hospitalization.

A handwritten signature in black ink, appearing to read "Danielle Nicolo".

Danielle Nicolo, MD, PhD
Assistant Professor of Medicine
Weill Cornell Medical Center

