

JANE DOE,
Baltimore City, MD

Prospective Plaintiff

v.

THE JOHNS HOPKINS HEALTH
SYSTEM CORPORATION
600 North Wolfe Street
Baltimore, Maryland 21287

Serve On:
Joanne Pollak, Esquire
Administration 414
600 North Wolfe Street
Baltimore, MD 21205

Prospective Defendant

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE CITY
*
* Case Number:
*
*
*

FILED
MAY 22 2013
CLERK OF COURT

* * * * *

NOTICE TO PERPETUATE EVIDENCE

**NOTICE OF DEPOSITION *DUCES TECUM* OF THE CORPORATE DESIGNEE OF
JOHNS HOPKINS HEALTH SYSTEM CORPORATION**

Potential Plaintiff, Jane Doe (“Jane Doe”),¹ by and through her undersigned counsel, and pursuant to Maryland Rules 2-404, 2-412, and 2-422, hereby gives notice that the oral deposition *duces tecum* of the following named persons will be taken by audio, video and/or otherwise, before a Notary Public of the State of Maryland or some other person duly qualified to administer an oath at the time and place indicated below, to continue from day-to-day until completed:

NAME: CORPORATE DESIGNEE OF JOHNS HOPKINS HEALTH
SYSTEM CORPORATION (“Johns Hopkins”)

DATE: March 25, 2013

¹ This Notice has been captioned using a pseudonym for the potential plaintiff because the potential action relates to sexual assault and sexual exploitation perpetrated upon Jane Doe when she was a minor. Maryland law permits civil plaintiffs to proceed anonymously to protect the victim’s privacy and to prevent additional humiliation. See *Pena v. Schwartz*, 853 F. Supp. 164, 168 (D. Md. 1994).

TIME: 10:00 AM

PLACE: SILVERMAN, THOMPSON, SLUTKIN & WHITE, LLC
201 North Charles Street, 26th Floor, Baltimore, Maryland 21201

IN ACCORDANCE WITH MARYLAND RULES 2-412(C), 2-422 AND 2-510, *WILSON V. LAKNER*, 228 F.R.D. 524 (2005), CITED WITH APPROVAL BY *SAXON MORTGAGE SERVICES, INC. V. HARRISON*, 186 MD.APP. 228, 973 A.2D 841 (2009), THE DEPONENT IS REQUIRED TO PRODUCE VARIOUS DOCUMENTS WHICH ARE IDENTIFIED ON THE ATTACHED SCHEDULE 1.

IN ACCORDANCE WITH MARYLAND RULE 2-412(D), *WILSON V. LAKNER*, 228 F.R.D. 524 (2005), CITED WITH APPROVAL BY *SAXON MORTGAGE SERVICES, INC. V. HARRISON*, 186 MD.APP. 228, 973 A.2D 841 (2009), THE DEPONENT IS REQUIRED TO DESIGNATE ONE OR MORE OFFICERS, DIRECTORS, MANAGING AGENTS, OR OTHER PERSONS WHO WILL TESTIFY ON ITS BEHALF AFTER INVESTIGATION AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION REGARDING SUBJECTS WHICH ARE IDENTIFIED IN THE ATTACHED SCHEDULE 1.

THE POTENTIAL ACTION

1. Jane Doe is an individual who resides in Baltimore City, Maryland.
2. Throughout the relevant period and until February 8, 2013, Nikita A. Levy, M.D., decedent ("Dr. Levy"), was employed as an obstetrician / gynecologist with Johns Hopkins.
3. Jane Doe became a patient of Dr. Levy in approximately 2004, when she was 14 years old and she has been under Dr. Levy's care from that time until the present day.
4. Jane Doe saw Dr. Levy periodically throughout this period and received full gynecological exams in Dr. Levy's office at Johns Hopkins.
5. On or about February 8, 2013, Jane Doe received a letter from Johns Hopkins informing her that Dr. Levy was no longer employed by Johns Hopkins. The letter contained no details of Dr. Levy's departure.
6. Dr. Levy died on February 18, 2013, in an apparent suicide.

7. On February 18, 2013, Johns Hopkins informed the media and a small group of Dr. Levy's patients that some of those patients had been illegally (and without the patients' consent) videotaped and photographed by Dr. Levy in the course of providing gynecologic and/or obstetric care at Johns Hopkins.

8. Based on the number of times Jane Doe saw Dr. Levy, the types of examinations performed, the fact that Jane Doe was alone in an examination room many times with Dr. Levy, and the time period of her visits, it is probable that Dr. Levy captured images of Jane Doe.

9. Moreover, Jane Doe has a reasonable basis upon which to suspect that Dr. Levy captured images and recorded video depicting her in various states of undress (including fully nude) while she was a minor.

10. Accordingly, Jane Doe has an array of potential causes of action against Dr. Levy's estate including (without limitation) violation of the federal Masha's law, 18 U.S.C. § 2252, invasion of privacy under Maryland law, intentional infliction of emotional distress under Maryland law, violation of state child pornography laws, Maryland's video voyeurism law, Maryland's wiretap statute and various other common law torts.

11. Jane Doe also has an array of potential causes of action against Johns Hopkins including (without limitation) claims for vicarious liability as Dr. Levy's employer and claims for direct liability for negligence, negligent retention, negligent hiring, and improper maintenance of policies, procedures, and safeguards to prevent dissemination of confidential information under Maryland law.

JUSTIFICATION FOR DISCOVERY

12. Jane Doe has a reasonable basis upon which to conclude that numerous images of her nude body and genitalia were captured by Dr. Levy and stored on various electronic media devices.

13. Jane Doe has received *no* information from any of the agencies and individuals with exclusive knowledge as to precisely which of Jane Doe's images were captured and what, if anything, was done with those images.

14. All the information concerning the scope of Dr. Levy's wrongdoing is exclusively within the possession custody and control of the Baltimore Police Department (BPD), the Baltimore County Police Department (BCOPD) and Johns Hopkins. Absent perpetuation of evidence currently in the custody of Johns Hopkins, there is actual risk that some of this evidence may be lost.

15. Johns Hopkins has exclusive possession, custody and control of various documents relating to the activities conducted while Dr. Levy was under its employment which may be essential to Jane Doe's ability to pursue her claims against Dr. Levy's estate.

16. BPD and BCOPD are investigating only the potential criminal liability associated with Dr. Levy's actions.

17. The scope of potential civil liability associated with Dr. Levy's actions is much broader than the scope of potential criminal liability. Accordingly, Johns Hopkins possesses evidence relevant to the civil investigation that will not be collected and preserved by BPD or BCOPD in the course of their criminal investigations.

18. A majority of the evidence relating to Jane Doe's civil claims is likely to be stored in electronic formats that are easily deleted and which may be automatically deleted after a given

time period, such that the evidence is likely to be lost unless perpetuation of evidence is permitted.

19. Because Jane Doe is left to wonder about whether her images have been disseminated on the Internet or otherwise, her emotional distress and the resulting damages are made more severe by every moment that passes in which critical evidence relating to her claims may be lost or destroyed.

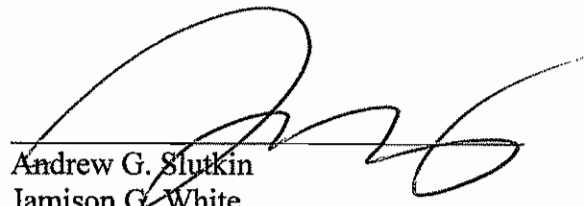
20. Accordingly, Jane Doe has established good cause pursuant to Maryland Rule 2-404(a) to demonstrate she is entitled to the discovery she now requests.

VENUE

21. This Court is the appropriate venue for this Motion pursuant to Maryland Rule 2-404(a)(3) because the torts giving rise to the action occurred in Baltimore City and additional expected adverse parties likely to be revealed in discovery reside in Baltimore City.

NOTICE TO POTENTIAL DEFENDANTS

22. Pursuant to Maryland Rule 2-404(a)(2), all parties upon whom this notice is served are hereby notified that they have the right to be present at the deposition described above and that information obtained as a result of this Notice may be used against them in a later action.



Andrew G. Slutkin
Jamison G. White
Steven J. Kelly
SILVERMAN, THOMPSON, SLUTKIN & WHITE,
LLC
201 N. Charles Street, 26th Floor Baltimore,
Maryland 21201
(410) 385-2225
(410) 547-2432

aslutkin@mdattorney.com
jwhite@mdattorney.com
skelly@mdattorney.com

CERTIFICATE OF SERVICE

I certify that, pursuant to Maryland Rules 2-404(a)(4) and 2-121(a)(3), on this 22nd day of February 2013, this document served by certified mail, restricted delivery, on the following parties to this Notice:

SANDRA LEVY, AS PERSONAL
REPRESENTATIVE FOR THE
ESTATE OF NIKITA A. LEVY, M.D.
912 Hampton Lane
Towson, MD 21286

and

THE JOHNS HOPKINS HEALTH
SYSTEM CORPORATION
600 North Wolfe Street
Baltimore, Maryland 21287

Serve On:

Joanne Pollak, Esquire
Administration 414
600 North Wolfe Street
Baltimore, MD 21205



Andrew G. Slutkin

JANE DOE,
Baltimore City, MD

Prospective Plaintiff

v.

THE JOHNS HOPKINS HEALTH
SYSTEM CORPORATION
600 North Wolfe Street
Baltimore, Maryland 21287

Serve On:

Joanne Pollak, Esquire
Administration 414
600 North Wolfe Street
Baltimore, MD 21205

Prospective Defendant

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR
* BALTIMORE CITY
*
* Case Number:
*
*
*
*

* * * * *

SCHEDULE 1
CORPORATE DESIGNEE TOPICS & DOCUMENT REQUESTS

DEFINITIONS

1. The pronouns “you” and “your” refer to the party to whom these document requests are addressed, and that party's agents, representatives, and attorneys.

2. “Document(s),” as used herein, shall include the original and any non-identical copies of any written, recorded, or graphic matter, however produced or reproduced (whether by hand, mechanical, electronic, photographic, or any other means), and includes the original, all copies, and all drafts prepared in connection with such Document, whether used or not, and further includes, but is not limited to: papers, books, records, catalogues, price lists, pamphlets, periodicals, Communications, letters, correspondence, e-mails, scrap books, notebooks, blueprints, meeting minutes (including progress meeting minutes), bulletins, circulars, forms, notices, postcards, telegrams, deposition transcripts, contracts, agreements, invoices, leases,

reports, studies, working papers, charts, proposals, graphs, sketches, diagrams, indexes, maps, analysis, statistical records, reports, results of investigations, reviews, ledgers, journals, balance sheets, accounts, books of accounts, invoices, vouchers, purchase orders, receipts, expense accounts, canceled checks, bank checks, statements, sound and tape recordings, videotapes, audiotapes, computer tapes or disks (including programming instructions and other materials necessary to understand such media), any other computerized information, memoranda (include any type or form of notes, memoranda, or sound recordings of personal thoughts, recollection, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings or conferences), photostats, microfilm, instruction lists or forms, diaries, calendar or desk pads, stenographer notebooks, appointment books, and other papers similar to any of the foregoing, however denominated, whether received by You or prepared by You for Your own use or for transmittal.

3. Person includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.

4. "Communication" or "communications" or "correspondence" includes, without limitation, any oral communication, whether transmitted in meetings, by telephone, telegraphs, telex, cable, tape recording, electronic mail, or otherwise, and all written communications.

5. "Relates to" "relating to" and/or "concerning" when used in connection with any request for a document or category of documents, means recording, summarizing, digesting, referring to, commenting upon, describing, reporting, listing, analyzing, studying or otherwise discussing in any way the subject matter identified in a request.

6. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these document requests any information that might otherwise be construed not to be responsive to these document requests.

7. “Dr. Levy” refers to Dr. Nikita Levy, previously employed by Johns Hopkins Medicine as an obstetrician/gynecologist.

8. “Johns Hopkins” refers to the Johns Hopkins Health System Corporation, which includes but is not limited to Johns Hopkins Hospital, t/a Johns Hopkins Hospital Inc., The Johns Hopkins Community Physician’s Inc., and The Johns Hopkins Health System Corporation, the employer of Dr. Levy.

9. “Incident” refers to Dr. Levy taking photographs and/or video of people.

DEPOSITION TOPICS AND DOCUMENTS REQUESTED

IN ACCORDANCE WITH MARYLAND RULES 2-412(C), 2-422 AND 2-510, *WILSON V. LAKNER*, 228 F.R.D. 524 (2005), CITED WITH APPROVAL BY *SAXON MORTGAGE SERVICES, INC. V. HARRISON*, 186 MD.APP. 228, 973 A.2D 841 (2009), THE DEPONENT IS REQUIRED TO (A) DESIGNATE ONE OR MORE OFFICERS, DIRECTORS, MANAGING AGENTS, OR OTHER PERSONS WHO WILL TESTIFY ON ITS BEHALF AFTER INVESTIGATION AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION REGARDING THE FOLLOWING SUBJECTS; AND PRODUCE ALL DOCUMENTS ON THE FOLLOWING SUBJECTS: The Johns Hopkins Corporate Designee will be expected to testify and to produce and documents relating to: (1) identification of all documents that are now or which have ever been in its possession, custody and/or control that relate to the incident (the “Relevant Documents”); (2) precisely how the “Relevant Documents” are maintained in the ordinary course of business; (3) the current location of the “Relevant Documents”; and all efforts undertaken to locate and/or preserve the “Relevant Documents.”

The types of documents for which such information should be provided include, but are not limited to:

1. All documents reflecting or relating to the identity of any patient treated by Dr. Levy while he was employed by Johns Hopkins including, without limitation, patient intake forms, appointment logs, calendars, billing records, patient notes and visitor logs.
2. All records relating to any patients treated by Dr. Levy while he was employed by Johns Hopkins including (without limitation) patient medical records, examination notes, orders, nursing charts and related ESI.
3. All documents relating to Dr. Levy's personnel and/or employment file including, without limitation, any record concerning any aspect of Dr. Levy's employment with Johns Hopkins.
4. All documents relating to any communication concerning any complaint or grievance against Dr. Levy by any source
5. All documents pertaining to any disciplinary actions taken against Dr. Levy.
6. All documents relating to any licenses or certifications held by Dr. Levy including, without limitation, all documents relating to any complaint made to any licensure board or certifying action and all documents relating to the outcome of the same.
7. All recorded and printed advertisements or promotional materials referencing Dr. Levy or the practice in which he worked.
8. All expense reports generated by Dr. Levy or the department of obstetrics / gynecology.

9. All documents reflecting or relating to the identity of all personnel who worked for Dr. Levy, with Dr. Levy, and/or in the same department with Dr. Levy from January 1, 1988 until present.

10. All personnel and/or employment files for any individual who worked for Dr. Levy, with Dr. Levy, and/or in the same department with Dr. Levy from January 1, 1988 until present.

11. All documents relating to any communication between Dr. Levy and any other member and/or employee of Johns Hopkins that relates to Dr. Levy's treatment of a patient.

12. All documents relating to any oral or written statements made by Dr. Levy.

13. All records pertaining to any communication between Dr. Levy and any other person or entity including (without limitation) communication between Dr. Levy and all patients treated while Dr. Levy was employed with Johns Hopkins.

14. All documents, including electronic and hard copy files, kept by Dr. Levy at Johns Hopkins.

15. An inventory of all items in Dr. Levy's office at Johns Hopkins, including but not limited to, any computers, laptops, thumb drives, external hard drives, tablet devices, smart phones, media storage devices, cameras, and any device capable of recording sound and/or photographic and/or videographic images.

16. All documents relating to or referring to any prior violations, investigations, or complaints against Johns Hopkins alleging violations of patient confidentiality, privacy or any HIPPA violations.

17. All documents that relate or refer to any administrative, civil, or criminal proceeding or lawsuit arising out of or resulting from an allegation that a Johns Hopkins patient was videotaped and/or photographed without the patient's consent.

18. All documents that relate or refer to any administrative, civil, or criminal proceeding or lawsuit arising out of or resulting from an allegation that a Johns Hopkins patient was videotaped and/or photographed without the patient's consent.

19. A copy of all versions of the Johns Hopkins employee handbook or manual from 2004 to present.

20. All documents relating or referring to Johns Hopkins' rules, regulations, policies, procedures, standards or guidelines that applied to Dr. Levy and/or any Johns Hopkins employee with whom he worked from 2004 to present.

21. A copy of all versions of Johns Hopkins' patient privacy protection procedures from 2004 to present.

22. A copy of all versions of Johns Hopkins' rules, regulations, policies and procedures regarding patient confidentiality from 2004 to present.

23. All documents relating to the report of the Johns Hopkins employee (the "Employee") who initially reported Dr. Levy's activities to Johns Hopkins' security staff.

24. All documents upon which Johns Hopkins relied upon in confirming the Employee's report to Johns Hopkins, and upon which Johns Hopkins relied in its decision to terminate Dr. Levy.

25. A list of all Johns Hopkins personnel involved in investigating the Employee's initial report to Johns Hopkins.

26. A list of all Johns Hopkins employees who have been interviewed in connection with the investigation of Dr. Levy.

27. All documents relating to the investigation of Dr. Levy for allegedly videotaping and photographing his patients.

28. All internal communications that relate in any way to Dr. Levy and/or his patients.

29. All documents referring or relating in any way to any person whose image(s) were recovered in any search conducted in connection with the investigation of Dr. Levy.

30. All documents relating to any written or oral statement made by Johns Hopkins, including any of its employees, agents or affiliates relating in any way to the investigation of Dr. Levy.

31. All documents reflecting any communication by or on behalf of Johns Hopkins to any police department or investigative agency concerning Dr. Levy.

32. All other photographs, videos, motion pictures, reports, drawings, documents, diagrams, measurements, or other descriptions, objects or tangible things relating to the incident.