

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 18 - SUFFOLK COUNTY**

*P R E S E N T :*

Hon. ROBERT WEBSTER OLIVER  
Justice of the Supreme Court

Motion RID: 4/17/2003  
Submission Date: 4/17/2003  
Mot. Seq. #: 005 - MG  
                  # 006 - MG

----- X  
MICHELE DORIVAL, :

Plaintiff,

- against -

ST. CATHERINE OF SIENA MEDICAL CENTER  
and MICHAEL GENTILESCO, M.D.,

Defendants. :  
----- X

**Law Office of John Guadagno**  
Attorney for Plaintiff  
136 East Main Street  
East Islip, New York 11730

**McAloon & Friedman, P.C.**  
Attorneys for Defts **Planned  
Parenthood & Dr. Blumstein**  
116 John Street  
29th Floor  
New York, New York 10038

**Fumuso, Kelly, DeVerna, Snyder  
Swart & Farrell**  
Attorneys for Deft **GentileSCO**  
2150 Joshua's Path  
Hauppauge, New York 11788

**Bartlett, McDonough, Bastone,  
& Monaghan, LLP**  
Attorneys for Deft **St. Catherine**  
300 Old Country Road, Suite 301  
Mineola, New York 11501

Upon the following papers numbered 1 to 26 read on this motion pursuant to CPLR 3043, compelling plaintiff to withdraw prejudicial and improper language from the bill of particulars, pursuant to CPLR 3124 and 3126 dismissing plaintiffs action for willful failure to comply with discovery demands and for such other and further relief; Notice of Motion/Order to Show Cause and supporting papers 1 to 12; Notice of Cross Motion and supporting papers 13 - 19 Answering Affidavits and supporting papers 20 - 24 ; Replving Affidavits and supporting papers 25 - 26 ; Other \_\_\_\_\_ ; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

**ORDERED** that this motion by the defendant, St. Catherine of Siena Medical Center for various relief and the cross motion by the defendant, Michael GentileSCO, M.D., to strike language in a Bill of Particulars served by the plaintiff for failure to provide authorizations is granted only to the extent that unless plaintiff serves the demanded authorizations within **twenty (20) days** of service of this order with notice of entry the complaint is dismissed.

The plaintiff, in her complaint, alleges that the defendants were guilty of gross negligence and recklessness. The Bill of Particulars served by the plaintiff is simply consistent with the allegations

in the complaint. The defendants have not moved for dismissal of the claim for punitive damages from the complaint, and the Court cannot convert this motion made pursuant to CPLR 3043 to a CPLR 3211 or 3212 motion. A motion to dismiss pursuant to CPLR 3211 or 3212 should include an affidavit of an expert to establish that there are no factual issues.

The medical history of the plaintiff is at issue in this action and the authorizations demanded in defendant's Exhibit H must be provided together with the authorizations agreed to be provided by stipulation dated January 16, 2003.

Dated:

June 3, 2003

  
ROBERT WEBSTER OLIVER, J.S.C.