

DOCKET NUMBER: WWM-CV21-5012142-S : SUPERIOR COURT
JANE DOE : J.D. OF WINDHAM
V. : AT PUTNAM
HYDE SCHOOL AT SOUTH WOODSTOCK, :
INC., ET AL : SEPTEMBER 25, 2024

**OBJECTION TO THE DEFENDANTS' REQUEST FOR A INDEPENDENT
MEDICAL EXAMINATION**

In accordance with Practice Book § 13-11 and Connecticut General Statutes § 52-178a, the plaintiff, Jane Doe, hereby objects to the defendants' request that she submit to an Independent Medical Examination to be performed by Tamar Katz M.D, Ph.D. on November 12, 2024, at 9:00 a.m. The plaintiff submits that to require the plaintiff to attend such examination on the date and time that was unilaterally selected by the defendants imposes an undue burden on the plaintiff and the Practice Book does not permit such examination.

First, the plaintiff objects to submitting herself to a medical examination with Tamar Katz on the date and time that was unilaterally picked by the defendants without regard for the plaintiff and her counsel's availability on that date. The plaintiff further objects to the request on the grounds that Tamar Katz is a not a physician or surgeon within the definitions and therefore, an independent medical examination conducted by Tamar Katz is not permitted pursuant to the Practice Book. Finally, the plaintiff objects on the grounds that

Tamar Katz is a pediatric neuropsychiatrist rather than general psychiatrist as the defendants represent, and thus, her opinion would be unhelpful to the defendants' case.

The plaintiff has objected in writing to the defendants' request. Under our laws and rules of practice that is all that is required to deny the defendants' request for a mental or physical examination under Practice Book §13-11. *Dittman v. Spotten*, Docket Number CV 541013, J.D. of New London at New London (Hurley, J.) (Mar. 13, 1998) (Plaintiff is not required to submit to an Independent Medical Exam where the plaintiff has objected in writing); *Privee v. Burns*, 5 Conn. Ops. 718 (Blue, J.) (June 21, 1999) (Plaintiffs have an unconditional statutory right to object to any physical examination). In accordance with Connecticut General Statutes § 52-178a, the Connecticut Practice Book allows the defendant to request that the plaintiff submit to an independent medical examination. *See* Practice Book § 13-11(b). Section 13-11(b) of the Connecticut Practice Book states:

[i]n the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve . . . a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by the plaintiff unless, within ten days from the filing of the request, the plaintiff files in writing an objection thereto specifying to which portions of said request objection is made and the reasons for said objection **No plaintiff shall be compelled to undergo a physical examination by any physician to whom he or she objects in writing.**

Id. (emphasis added). However, the Connecticut Practice Book gives the plaintiff the option to object to any such request and further states that “[n]o plaintiff shall be compelled to undergo a physical examination by any physician to whom she objects in writing.” Id. Plaintiffs have an unconditional statutory right to object to *any* physical examination. *Privee v. Burns*, 46 Conn. Supp. 301, 335 (1999). “To compel anyone, and especially a woman, to lay bare the body, or to submit it to the touch of a stranger, without lawful authority, is an indignity, an assault and a trespass [.]” *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 252 (1891). “Our judicial system has long recognized an interest in personal autonomy and bodily integrity.” *Privee v. Burns*, 46 Conn. Supp. at 306-7 (1999) (referencing *Washington v. Glucksberg*, 521 U.S. 702, 724 (1997)). Moreover, recent Connecticut case law further supports the plaintiff’s position. In *Hayn v. Keith Aurand Const.* the court determined,

But it is the statute and the rule that matter. They unequivocally say that I may not compel an examination by a physician objected to in writing. That is enough for me. In 2009, in *Rainforest Café, Inc. v. Dept. of Revenue Services*, our Supreme Court held that courts need not fuss over the unambiguous words of a statute—they should just apply them unless they yield “absurd or unworkable” results. When it enacted General Statutes § 1-2z, the legislature implored us to do the same thing.

Hayn v. Keith Aurand Const., No. KNLCV116011493S, 2014 WL 3805612, at *1.

Furthermore, the plaintiff objects because Connecticut Practice Book §13-11 is clear, neuropsychiatrist's do not qualify as physicians or surgeons. Section 13-11 of the Connecticut Practice Book states in relevant part:

(A) In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, in which the mental or physical condition of a party, or of a person in the custody of or under the legal control of a party, is material to the prosecution or defense of said action, the judicial authority may order the party to submit to a physical or mental examination by a **physician** or to produce for examination the person in the party's custody or legal control.

(Emphasis added). Additionally, General Statutes §52-178a only authorizes such examinations by "physicians or surgeons." General Statutes § 52-178a states in relevant part:

[i]n any action to recover damages for personal injuries, the court or judge may order the plaintiff to submit to a physical examination by one or more **physicians or surgeons**. No party may be compelled to undergo a physical examination by any **physician** to whom he objects in writing submitted to the court or judge.

(Emphasis added). There is no mention in Practice Book §13-11 or General Statutes §52-178a that allows for the examination by a neuropsychiatrist, nor for that matter by a dentist, psychologist, Doctors of psychology (PsyD), Advanced Practice Registered Nurses

(APRN), Nurse Practitioners (NP), Doctors of Physical Therapy (DPT), acupuncturists, audiologists speech language pathologists, occupational therapists, respiratory therapists, sonographers, or physician assistants (PA.). It is clear that the intent of §52-178a and Practice Book §13-11, in using only the words “physician” and “surgeon” was to limit the kinds of professionals allowed to conduct such examinations. In fact, the courts have previously found that § 52-178a and § 13-11 limit the court's discretion to allow different kinds of experts to conduct an IME. *Romano v. Cumberledge*, Docket No. CV-19-6096903-S, 2023 Conn. Super. LEXIS 611, at *16 (Super. May 5, 2023) citing *Gladney v. Riccio*, Superior Court, judicial district of Hartford, Docket No. CV-04-4004997-S, (February 24, 2006, *Keller J.*).

Here, although the defendants disclosed Tamar Katz as a psychiatrist, upon information and belief, she is actually a child and adolescent psychiatrist working currently as a pediatric neuropsychiatrist. There is simply nothing that the plaintiff can find and nothing that the defendants have pointed to tending to show that Tamar Katz qualifies as a physician or surgeon.

Further, any examination by Tamar Katz would be entirely unhelpful to the defendants’ case. Upon information and belief, Tamar Katz works closely and primarily with children in her role as **pediatric neuropsychiatrist** at Boston Children’s Hospital. The plaintiff, Jane Doe, was around 17 years old at the time of the sexual assault that took place

in the Summer of 2005 that is the subject of this action. There is little to no value that an independent medical investigation by a **pediatric** neuropsychiatrist would offer in evaluating Jane Doe today almost 20 years later as a grown adult. Any minimal value that is gained by the examination of Tamar Katz is far outweighed by the trauma that the Plaintiff would endure having to retell the events that underly this complaint to complete stranger whom she has no professional care relationship with.

Finally, the plaintiff objects to the examination on the grounds that both the date and time of the requested examination were selected unilaterally by the defendants. The defendants never requested dates or times that the plaintiff or her counsel would be available for the requested examination. It is unfair to expect the plaintiff and her counsel to be available for a lengthy examination on a date and time picked solely by the defendants without consideration for the plaintiff's and her counsel's schedule.

Wherefore, for the foregoing reasons, the defendants' request for an Independent Medical Examination should be denied and the plaintiff's object thereto should be sustained.

THE PLAINTIFF,
JANE DOE

By: /s/ 445083

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on September 25, 2024 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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