

DOCKET NO: WWMCV215012142S

SUPERIOR COURT

DOE, JANE  
V.  
HYDE SCHOOL AT SOUTH WOODSTOCK  
INC

JUDICIAL DISTRICT OF WINDHAM  
AT PUTNAM

9/30/2024

ORDER

ORDER REGARDING:  
09/25/2024 153.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER: OVERRULED

OBJECTION OVERRULED

Before the court are the defendants' "Request for Independent Medical Examination" (Docket Entry No. 152.00) and the plaintiff's Objection (Docket Entry No. 153.00).

In the defendants' request, they seek an order from the court directing the plaintiff to submit to an independent medical examination (IME) with Tamar Katz, M.D., Ph.D., on November 12, 2024, at 9:00 a.m. via Zoom. Moreover, the defendants summarily represent in support of their request that "such examination is material to the defense of this action."

In the plaintiff's objection, she argues (1) that the date and time of the examination was chosen unilaterally by the defendants and presents an undue burden on the plaintiff and her counsel for scheduling reasons; (2) the plaintiff has an absolute right to object to undergoing any examination; (3) Dr. Tamar Katz is a neuropsychiatrist and not physician or surgeon and, therefore, not a provider for which an IME can be noticed pursuant to the applicable Practice Book section and statute; (4) that because Dr. Katz is a pediatric neuropsychiatrist, and not a general neuropsychiatrist, her opinions would not be helpful to defendant's case.

The defendants' request is made pursuant to Practice Book § 13-11. While not referenced by the defendants, General Statutes § 52-178a has been recognized as the companion statutory provision to Practice Book § 13-11.

Practice Book § 13-11 provides, in relevant part:

(a) In any civil action . . . 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 . . . 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 . . . .

(b) In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve in accordance with Sections 10-12 through 10-17 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. The objection shall be placed on the short calendar list upon the filing thereof. The judicial authority may make such order as is just in connection

with the request. No plaintiff shall be compelled to undergo a physical or mental examination by any physician to whom he or she objects in writing.

General Statute Sec. § 52-178a states that “[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.”

The plaintiff’s third objection summarily asserts that Dr. Katz is not a physician or surgeon “within the definitions”, but then offers no applicable definitions. The plaintiff cites to *Romano v. Cumberledge*, Superior Court, judicial district of New Haven, Docket No. CV-19-6096903-S (May 5, 2023, Wilson, J.), which the court also finds instructive. In that case the court reviewed *Black’s Law Dictionary* (3rd Ed. 1933) and *Merriam-Webster’s Collegiate Dictionary* (11th Ed. 2003) for the definition of “physician” in order to conclude that a neuropsychologist does not fall within the applicable definitions.

In this court’s review of the applicable case law, the Connecticut Supreme Court has reviewed the definitions at issue and answered the question of whether a psychiatrist is a physician in the affirmative:

“A ‘physician’ is defined as ‘a person skilled in the art of healing: one duly authorized to treat disease: a doctor of medicine . . . .’ Webster’s Third New International Dictionary; see also *Black’s Law Dictionary* (5th Ed.). A ‘psychiatrist’ is defined as ‘a physician specializing in psychiatry.’ (Emphasis added.) Webster’s Third New International Dictionary; see also General Statutes §§ 17a-580 (12) and 52-146d (7). It cannot be disputed that psychiatrists are doctors of medicine and that they are licensed to practice that discipline, and we therefore conclude that psychiatrists are subsumed in the term ‘physician’ in § 52-174 (b).” *Kilduff v. Adams, Inc.*, 219 Conn. 314, 337, 593 A.2d 478 (1991). As such, this case is patently distinguishable from *Romano* and others addressed to non-physician experts.

Further, in this case the plaintiff’s complaint alleges damages which include post-traumatic stress disorder, depression, and pain and suffering both mental and physical. As were the circumstances in *Romano*, the plaintiff in this case has disclosed an anticipated trial expert, Erin Sutherland, MS, (seemingly not physician or surgeon) who is expected to testify, inter alia, regarding causation and damages in relation to plaintiff’s treatment, including for post-traumatic stress disorder. Notwithstanding, the plaintiff’s objection seeks to prevent the defendant from offering its own expert on that those issues, thereby creating a potential issue of due process. See *Cook v. Miller*, 103 Conn. 267, 130 A. 571 (1925), *Wallace v. Commerce Prop., Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-95-377552 (November 9, 1999, Alander, J.) (26 Conn. L. Rptr. 25).

Regarding plaintiff’s fourth objection, there is also not a sufficient record before the court at this procedural juncture for the court to accept the plaintiff’s argument that Dr. Katz is a pediatric and not general provider in neuropsychiatry. For the purposes of the objection before the court, whether Dr. Katz’s specialization or experience is more heavily pediatric in nature may go to the weight of her opinion with the trier of fact, but not to her professional ability or capacity to perform an IME as a purportedly educated, trained, and appropriately licensed and credentialed neuropsychiatrist. Therefore, the plaintiff offers no support for the claim that Dr. Katz’s opinion would not be material or of assistance to the defense in this case.

With regard to the plaintiff’s second objection and argument that she has an unconditional statutory right to object to any physical or mental examination, the court agrees and cannot issue an order which defendants seek to compel the plaintiff to undergo the examination requested. However, plaintiff must also be aware that in exercising her prerogative in this regard, if she chooses to object and not appear for an examination notwithstanding the court’s overruling her objections to the same herein, the defendant could seek sanctions pursuant to Practice Book § 13-14, or trial remedies as described in *Privee v. Burns*, 46 Conn. Supp. 301, 333-35, 749 A.2d 689 (1999).

Finally, and with regard to the plaintiff’s first objection and argument that the unilateral date and time selected by the defendants for the IME creates an undue burden on plaintiff and her counsel, it is ORDERED that IF, AND ONLY IF, the plaintiff chooses to waive her objection and appear for an IME

with Dr. Katz, no later than 10/10/2024 counsel shall communicate and select a mutually agreeable date and time between 10/11/2024 and 11/15/2024 for the IME on Zoom to be performed.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: CODY N GUARNIERI

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.