



DEFENDANTS DID NOT SHOW THERE WAS A COMPELLING NEED FOR DISCOVERY OF 'ALCOHOL/DRUG TREATMENT/MENTAL HEALTH INFORMATION/HIV-RELATED INFORMATION' IN THIS SLIP AND FALL CASE, DISCOVERY REQUEST SHOULD HAVE BEEN DENIED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined that the defendants request for discovery of "Alcohol/Drug Treatment/Mental Health Information/HIV-Related Information" in this slip and fall case was not supported by evidence of a compelling need:

"[A] party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue" ... However, Public Health Law § 2785(1) provides that, "[n]otwithstanding any other provision of law, no court shall issue an order for the disclosure of confidential HIV related information," and the only exception to that prohibition that is pertinent in this case requires an application showing "a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding" (Public Health Law § 2785[2][a]).

Here, the defendants failed to proffer any showing of a compelling need for disclosure related to "HIV-Related Information." Further, the defendants failed to submit an expert affidavit or any other evidence that would establish a connection between "Alcohol/Drug Treatment/Mental Health Information/HIV-Related Information," and the cause of the accident, and failed to make any effort to link any such information to the plaintiff's ability to recover from his injuries or his prognosis for future enjoyment of life [Nesbitt v Advanced Serv. Solutions, 2019 NY Slip Op 04961, Second Dept 6-19-19](#)