

1 done to prevent it and that the idea he should
2 have done a Caesarean section is simply
3 hindsight, and it's worthless. I ask you to
4 listen to the facts, listen to the proof that
5 comes to you throughout the course of the trial,
6 keep an open mind as I discussed in my voir dire,
7 wait till you hear all the evidence especially
8 testimony of Dr. Nath, especially the testimony
9 of the experts before you judge Dr. Lizardi what
10 he did that day. Thank you.

11 THE COURT: Ladies and gentlemen, I need to
12 discuss some legal matters before the first
13 witness comes on with the attorneys, and we need
14 to move some things around so we'll take a
15 recess. Please remember not to discuss the case,
16 don't talk to the parties or the attorneys, don't
17 do any Googling on your smart phones, and we'll
18 see you back in about ten or fifteen minutes.

19 (Recess of the court)

20 PROCEEDINGS HELD AFTER RECESS IN CHAMBERS:

21 THE COURT: All right, you want to make an
22 application?

23 MR. BROUSSEAU: Yes. There was some, Judge,
24 there was mention by Mr. Mills in his opening
25 statement that he was going to examine Dr.

1 Lizardi during his direct examination of Dr.
2 Lizardi regarding the OPMC in this case. There
3 was a consent Order that was entered into by Dr.
4 Lizardi in June of 1995 with OPMC regarding an
5 underlying charge that dated back to 1992
6 essentially regarding an EMTALA violation of
7 allowing a lady to drive herself to the Massena
8 Hospital instead of doing an exam at Canton-
9 Potsdam Hospital or insisting that she be
10 transported by ambulance, that it was a two year
11 suspension stayed with a three year probation.
12 The events occurred in 1992. By the time he was
13 examining Susan Skelly-Hand, his license was at
14 that point he was able to practice medicine
15 without restriction with regards to Ms. Hand.
16 The underlying OPMC matter doesn't affect the
17 treatment that she received or even analogous
18 treatments. The determination of issues related
19 to the relevance of testimony would rest within
20 the sound discretion of the court. It can be
21 excluded even if relevant where the probative
22 value would be substantially outweighed by the
23 danger that it would unfairly prejudice or
24 mislead a jury. The courts have held that OPMC
25 unrelated to a medical malpractice includes even

1 the revocation of a physician's medical license
2 are inadequate because they have marginal
3 relevance and are likely to unduly prejudice the
4 jury, Maraziti v. Webber, 185 Misc. 2d 624,
5 Bogdan v. Peekskill Community Hospital, 168 Misc.
6 2d 856, 1996. It's my position in this case any
7 examination regarding, of Dr. Lizardi regarding
8 this OPMC matter should be precluded and that any
9 evidence is much more prejudicial than probative
10 particularly with regards to the medical
11 treatment he was providing Susan Skelly-Hand on
12 February 25, 1996.

13 THE COURT: Mr. Mills?

14 MR. MILLS: Your honor, our position is that
15 Dr. Lizardi was under suspension at the time he
16 undertook to care for Susan, and by his testimony
17 taken at his deposition on January 25, 2005, he
18 acknowledged that that suspension ran from July
19 of 1995 to July of 1998 and therefore encompassed
20 the time period we're talking about. The
21 suspension related to his assessment and care of
22 a patient where it was determined that his
23 release of this patient was against the
24 appropriate standards of care and potentially put
25 her at risk, that he didn't follow the course

1 that was required of a board certified
2 obstetrician at that time even in the emergency
3 room setting and made decisions that were
4 contrary to the best interests of that patient.
5 I see no distinction between that type of
6 situation in that instance and our instance where
7 he is not considering what's in the best interest
8 of his patient or the infant. And so the
9 allegations are very much similar, and it is in
10 fact a time that he was under the suspension, is
11 at a time when he's providing the care and
12 treatment for this child so I think it's very
13 directly relevant, and as to its prejudice,
14 there's a lots of things I'm going to be asking
15 Dr. Lizardi about that are going to be considered
16 by him to be prejudicial, but it doesn't mean
17 that they're not relevant and admissible.

18 THE COURT: Well, Dr. Lizardi's care and
19 treatment of the patient for which he received
20 the suspension is not before us today, and I find
21 that to go into the particulars of the charge
22 would be prejudicial. However, the fact and the
23 status of his license is fair game, and I think
24 you can ask him about whether it was suspended,
25 and Mr. Brousseau can inquire about the fact that

1 was intact at the time that this was being done,
2 but I'm going to limit you not to go into the
3 underlying reasons for the suspension. Okay?

4 MR. MILLS: Understood.

5 MR. BROUSSEAU: Exception.

6 THE COURT: Yeah.

7 PROCEEDINGS HELD IN THE COURTROOM WITH THE
8 JURY PRESENT:

9 THE COURT: All right, Mr. Mills, call your
10 first witness.

11 MR. MILLS: Your Honor, we'd call the
12 defendant, Dr. Lizardi.

13 THE CLERK: Do you solemnly swear that the
14 answers you shall give will be the truth, the
15 whole truth, and nothing but the truth, so help
16 you God?

17 DR. LIZARDI: I do.

18 MR. MILLS: Your Honor, I have pre-marked and
19 shown Mr. Brousseau the certified records of the
20 Canton-Potsdam Hospital for the admissions in
21 February of 1996 of Susan Hand and Rachel Hand.
22 The certified records for Susan Hand are
23 Plaintiff's Exhibit 8, and the records for Rachel
24 Hand are Plaintiff's Exhibit 9. I would offer
25 them into evidence at this time.