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COURT OF APPEALS

STATE OF NEW YORK

THE PLASTIC SURGERY GROUP, P.C.,

Appellant,

-against-

No. 106

THE COMPTROLLER OF THE STATE OF NEW
YORK,

Respondent.

20 Eagle Street
Albany, New York
November 21, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The first appeal on this
2 afternoon's calendar is appeal number 106, Matter of
3 Plastic Surgery Group v. the Comptroller of the State of
4 New York.

5 Counsel?

6 MR. DIDORA: Thank you, Your Honor. Good
7 afternoon, Your Honors. Matthew Didora for the appellant,
8 the Plastic Surgery Group. I'd like to reserve three
9 minutes for rebuttal.

10 CHIEF JUDGE DIFIORE: Yes, of course.

11 MR. DIDORA: When the state legislature conferred
12 upon the Comptroller the authority to issue subpoenas, it
13 expressly conditioned subpoenas issued pursuant to that
14 authority on the entirety of the C.P.L.R. In C.P.L.R.
15 3122, it - - -

16 JUDGE STEIN: So let me ask you this, 3122(d)
17 says that the party seeking disclosure must bear the
18 expense. Does that - - - does that provision apply here
19 also? So the Comptroller has to bear whatever copying
20 costs or whatever costs there may be in getting this
21 discovery; does - - - does that apply?

22 MR. DIDORA: I think it likely could. If, under
23 certain circumstances, I think it - - - it could apply.
24 But what we're talking about here, we have an express - - -

25 JUDGE FEINMAN: And if you're correct that the



1 subpoenaeas are subject to 3122, who's going to carry the
2 burden of securing these actual patient signatures from
3 these seventy-eight individuals? Who has that burden
4 before the Comptroller can then conduct the audit?

5 MR. DIDORA: Well, in that instance - - -

6 JUDGE FEINMAN: Could it be the facility that has
7 the records? Is it going to be the - - -

8 MR. DIDORA: Sure. Well, I think if it's the
9 Comptroller that wants the records, and they have to get
10 authorizations, it would be the Comptroller that would have
11 to get the authorizations. But there are ways that the
12 Comptroller - - -

13 JUDGE FEINMAN: So they're going to get a list of
14 who these patients are and their contact information, and
15 then go around and seek it?

16 MR. DIDORA: Well, presumably - - -

17 JUDGE FEINMAN: And have you already disclosed
18 too much in doing that?

19 MR. DIDORA: Presumably, the Comptroller would
20 already have that information because - - - through United.
21 I mean, they've identified the 1,500 patients that fall
22 within the scope of the audit. So presumably, the
23 Comptroller has all of the information that it would need
24 to send out authorizations.

25 But here the Comptroller's office - - - and this



1 goes back to what the Third Department said about that to
2 require the authorizations would eviscerate the
3 Comptroller's ability to conduct these audits. And I - - -
4 I simply don't think that that's the reality because there
5 are - - - first of all, there's nothing in the record to
6 support that; it's a purely speculative conclusion. But
7 furthermore, there are other ways the Comptroller - - - or
8 other means at the Comptroller's disposal to get the
9 information that it - - - that it needs. As I mentioned -
10 - -

11 CHIEF JUDGE DIFIORE: Could they have requested -
12 - - and I believe they did - - - redacted information of
13 patient records?

14 MR. DIDORA: If they had requested redacted
15 records in - - - in the subpoena, one of the issues is who
16 bears the expense of redacting that information and how
17 much the information has to be redacted.

18 3122 does not speak in any sense to, you know,
19 redacting records. They served a blanket subpoena for
20 patient medical records, and the plain text of the statute,
21 which controls here, says that a subpoena to a medical
22 provider, other than a trial subpoena issued by a court
23 requesting patient records, must be accompanied by
24 authorizations. I mean, the statutory language is plain
25 here.



1 CHIEF JUDGE DIFIORE: So talking about the
2 statutory language for a second, when you look at
3 3211(2) (a), "pursuant to this rule", what rule are we
4 referring to here?

5 MR. DIDORA: 3122(a) (2). In other words - - -

6 JUDGE FAHEY: Well, is that correct? Because the
7 C.P.L.R. refers to both rule and sections. And the way I
8 understand the history of that is that there were rules and
9 then there were statutes that were incorporated together, I
10 think in '62 is when that took place. And that's why you
11 have those two different distinctions. As you read the
12 statute you'll see rule, section, rule, and it isn't the
13 same.

14 Now, it seems to me that 3122 is actually
15 referring back to 3120, which is the rule that precedes it.
16 It's clearly not referring to 30 - - - 3121, because that's
17 the medical discovery rule. So I don't know if your
18 reading really bears analysis is what I'm saying.

19 MR. DIDORA: Well, I think it does because 3122
20 is talking about specifically how you would go about
21 subpoenaing medical records from a - - - from a provider.
22 And it has - - - the subpoena has to have certain language
23 on it - - -

24 JUDGE FAHEY: But it really - - -

25 MR. DIDORA: - - - disclosure language. So they



1 say if you're a subpoena - - -

2 JUDGE FAHEY: Listen, though - - -

3 MR. DIDORA: - - - provider and you're doing it
4 pursuant to this section, you're following the - - - the
5 requirements of this section. That's why I think,
6 "pursuant to this rule", is an internal reference to the
7 statute to that section itself.

8 JUDGE FAHEY: I see. It's not an unreasonable
9 reading of it. I'm not sure I agree with it, but it's - -
10 - it's a reasonable reading, you say, of it. But what's
11 really more compelling to me is what kind of subpoena is
12 this. Is this a discovery subpoena, or is it an
13 investigative subpoena?

14 MR. DIDORA: Well - - -

15 JUDGE FAHEY: And can that distinction be fairly
16 drawn, I guess, is really what we have to look at.

17 MR. DIDORA: The C.P.L.R. doesn't distinguish
18 between a discovery subpoena and an investigative subpoena.

19 JUDGE FAHEY: You're right, but there are things
20 that do. For example, the Sponsor's memorandum for 3122
21 quite clearly refers to - - - let me quote it to you. It
22 says - - - in the Bill Jacket in 2011, and in - - - in
23 talking about 3122, and that 3122 requiring patient
24 authorization applies only to subpoenas issued during
25 discovery. Also the OCA memorandum and the memorandum in



1 the bill during discovery, and the no-objection letter from
2 the State Education Department, all of - - - all of those
3 communications seem - - - seem to support the reading that
4 3122 specifically refers to patient authorization applying
5 to subpoena duces tecum, in this sense, only during
6 discovery.

7 MR. DIDORA: But if we look at the text that the
8 legislature actually adopted, and you go back to 2301 of
9 the C.P.L.R., that identifies three subpoenas: a subpoena
10 to attend and give testimony; a subpoena to produce books,
11 records, and things; and a child support subpoena.

12 3122 and State Finance Law, Section 9, for that
13 matter, they track that same language. They don't - - -
14 there's no language anywhere in those three statutes that
15 talks about an investigative subpoena or a discovery
16 subpoena. They talk about subpoenas for books. And 3122
17 talks about a narrower subset of subpoenas for books where
18 the books are medical records and the subpoena is sent to a
19 medical provider.

20 JUDGE STEIN: Don't you have to also take this in
21 the broader context of the C.P.L.R. as a whole, which you
22 say that - - - that's what applies here, the C.P.L.R. as a
23 whole.

24 MR. DIDORA: Correct.

25 JUDGE STEIN: I think there's a pretty good



1 argument that only those provisions of the C.P.L.R. that
2 apply to this situation apply, but be that as it may. But
3 you have - - - you have Article 23, and it talks about
4 subpoenas generally.

5 Then you have Article 31, and that's talking
6 about discovery and - - - and trials and - - - and actions
7 that have been commenced. And this falls within that
8 article. Not only that, it was originally part of (a)(1),
9 and then it was separated out. And I - - - I can't find
10 anything in the legislative history that would indicate
11 that, in doing that, the legislature intended to - - - to
12 make those separate in terms of their application. So - -
13 - so don't we have to consider all of that, I guess, is my
14 question.

15 MR. DIDORA: We can.

16 JUDGE STEIN: And if not, why not?

17 MR. DIDORA: This court's precedent in Squadrito
18 and Ministers and Ministers, it talked about the limited
19 usefulness of headings and - - - and titles because of the
20 fact that the legislature does its best to group related
21 things together.

22 JUDGE STEIN: Sure. If that were it, I would say
23 you have a very strong point. But I'm not just talking
24 about the titles; I'm talking about the entire context and
25 - - -



1 MR. DIDORA: Sure.

2 JUDGE STEIN: - - - and how - - - and how the
3 whole C.P.L.R. is organized in - - - in this regard.

4 MR. DIDORA: If - - - I think if you took
5 3122(a)(2), as written, and you lifted it up and you put it
6 in Article 23, I don't think there'd be any doubt at all
7 that the Comptroller was obligated to comply, in this
8 instance, with that section.

9 And if that's the case, that's based on the plain
10 language of the statute. And if we reach a different
11 result now, just because it's in Article 31 as opposed to
12 Article 23, aren't we then elevating titles above the plain
13 language of the text? And - - -

14 JUDGE STEIN: But you're also ignoring the
15 "pursuant to this rule" language, or assuming it means what
16 you - - - what you think it means.

17 MR. DIDORA: Right, I think - - - you know,
18 there's a consistent way to read that phrase, "pursuant to
19 this rule", and everything else that this court has said
20 about statutory interpretation and the usefulness of - - -
21 of headings, that is all very consistent. And when we go
22 back and we say, well, as the Comptroller says in their
23 brief that, oh, it only means the provisions of the
24 C.P.L.R. that apply in this instance. Well, in this
25 instance we have a - - - I see my time - - -



1 CHIEF JUDGE DIFIORE: Continue.

2 MR. DIDORA: - - - is up, but if I could finish,
3 please.

4 CHIEF JUDGE DIFIORE: Finish up your answer.

5 MR. DIDORA: To say it only applies, well in this
6 instance we have a provision of the C.P.L.R. addressing
7 subpoenas to medical providers for patient records. And
8 there's one section of the C.P.L.R. that addresses
9 subpoenas to medical providers for patient records. This
10 is the one section that has to apply to this case.

11 JUDGE FAHEY: All right.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 JUDGE FAHEY: Can I - - -

14 CHIEF JUDGE DIFIORE: Yes, of course.

15 JUDGE FAHEY: Is it all right, Judge?

16 CHIEF JUDGE DIFIORE: Of course. Of course.

17 JUDGE FAHEY: Thanks.

18 Just one point off of that point, not on the same
19 point. You - - - you abandoned your - - - your HIPAA
20 contentions; is that correct?

21 MR. DIDORA: I'm certainly not raising a HIPAA
22 contention here because I don't think HIPAA gets to the
23 final point, right? HIPAA is just you can - - -

24 JUDGE FAHEY: The reason I ask - - -

25 MR. DIDORA: - - - if you want to - - -



1 JUDGE FAHEY: Let me tell you why I'm asking - -
2 -

3 MR. DIDORA: Sure.

4 JUDGE FAHEY: - - - because I want to know if - -
5 - if you concede that the Comptroller's department is a
6 health oversight agency.

7 MR. DIDORA: I do not concede it. It is not
8 relevant here because, if it is a health oversight agency,
9 and, you know, I very really specifically didn't go into
10 that, even in the underlying petition - - -

11 JUDGE FAHEY: No, I - - -

12 MR. DIDORA: - - - because it doesn't address the
13 final point, because even if it is - - -

14 JUDGE FAHEY: You're saying even if it is, they
15 still don't have this authority.

16 MR. DIDORA: It just means "may"; it's not "you
17 must". "Must" gets to - - - subpoenas is how you get to
18 "must", and that's what we're addressing here.

19 JUDGE FAHEY: Thank you.

20 MR. DIDORA: Thank you.

21 CHIEF JUDGE DIFIORE: Thank you, counsel.
22 Counsel?

23 MR. LANG: Good afternoon, Your Honors. Jeffrey
24 Lang on behalf of the Comptroller.

25 Just to pick up on the last point, the



1 Comptroller is a health oversight agency within the meaning
2 of - - - of HIPAA. That was argued below. The Third
3 Department found that the Comptroller was, which is
4 consistent with the HIPAA regulations, and petitioner
5 hasn't argued to the contrary.

6 JUDGE FAHEY: As I understood the thrust of
7 petitioner's point is that, when you look at the
8 legislative history, however much that may work against us,
9 you don't get to that because the plain language is
10 dispositive. And I think you should start there.

11 MR. LANG: The plain language is dispositive in
12 our favor, so you don't need to get to the - - - to the
13 legislative history. And that's for three reasons. One,
14 the placement of C.P.L.R. 3211(a)(2) in - - - in Article
15 31, which concerns disclosure in the prosecution and
16 defense of an action. So we're not talking about a
17 conflict with just a heading in the substance. The
18 substance concerns the prosecution and defense of an
19 action.

20 And the second is the position of (a)(2)
21 juxtaposed to (a)(1). Now, petitioner concedes that (a)(1)
22 only concerns pre-trial discovery subpoenas. And that's
23 absolutely right, (a)(1) concerns the procedure for
24 objecting to disclosure sought by a document subpoena,
25 quote, "under Rule 3120 or Section 3121", and document



1 subpoenaeas that are issued under Rule 3120 are those that
2 apply. And then it's just a quote from the C.P.L.R.,
3 "after commencement of an action".

4 So it's clear that 3122(a)(1) only applies to
5 pre-trial discovery document subpoenaeas. And then if you go
6 to the plain language of (a)(2), that also supports our
7 argument because it refers to a medical provider served
8 with a document subpoena "requesting the production of a
9 patient's medical records pursuant to this rule". Now,
10 "this rule" can only sensibly be read to refer to Rule 3211
11 as a whole.

12 JUDGE FAHEY: No, but that's not what counsel
13 says. When he says - - - when they're saying "this rule",
14 he's saying it's referring to the rule that you're speaking
15 of, 3122.

16 MR. LANG: It refers to - - - well, his - - - his
17 argument, as I understand, is - - - is that it only refers
18 to what I would call subsection or subdivision 3211(a)(2),
19 which, in their view, is just a freestanding subsection
20 that applies to all subpoenaeas, which takes that subsection
21 completely out of context.

22 And our argument is - - - is that even if you
23 look at the language of the subsection pursuant to this
24 rule, this rule isn't this subsection. The C.P.L.R. has
25 articles, it has rules, it has sections. So when it says



1 "this rule", it must mean the rule as a whole. So you look
2 at the rule as a whole, and again, when you look at the
3 rule as a whole, it's clear that it applies only to pre-
4 trial discovery subpoenas.

5 JUDGE WILSON: What are you calling the rule as a
6 whole?

7 MR. LANG: The rule as a whole I'm calling
8 C.P.L.R. 3211, the rule which has four subsections. It has
9 (a), (b), (c), and (d). So Justice Stein - - - Judge Stein
10 asked about subdivision (d), and again, the answer to that
11 question is it reinforce - - - (d) does not apply to the
12 Comptroller's subpoenas; it just reinforces the litigation
13 context. It says that the reasonable production expenses
14 of a nonparty shall be defrayed by the party seeking
15 discovery. That just reinforces the litigation context.
16 We're talking about parties and nonparties to litigation.
17 We're not talking about the Comptroller's investigative
18 subpoena.

19 JUDGE RIVERA: So then (a)(2), when you say "this
20 rule", you mean the rule in which this subdivision is
21 contained?

22 MR. LANG: Precisely.

23 JUDGE RIVERA: Okay.

24 MR. LANG: And you know, if there were any doubt
25 - - - I mean, the context in the plain language supports



1 our reason - - - our - - - our position. But if there's
2 any doubt, if you just look at the legislative history that
3 - - - of - - - of 3122(a)(2), that further supports our - -
4 - our position. It was added - - -

5 JUDGE STEIN: Are there any - - - you talked a
6 little bit about HIPAA, but are there any New York patient
7 privacy laws that speak to whether there's an exemption for
8 the Comptroller that you know of?

9 MR. LANG: Not that I'm aware of. There is the -
10 - - the New York - - - there's the state personal - - -
11 it's - - - it's the State Personal Privacy Protection Law.
12 That's Article 6-A of the public officers law, and that's
13 the law that requires the Comptroller to maintain the
14 confidentiality of this information that's collected for
15 the purposes of these audits.

16 JUDGE FAHEY: I thought the Comptroller, under
17 the Public Officers Law 92(1) was bound not to disclose to
18 - - -

19 MR. LANG: Yes, that's in Article 6-A, precisely.

20 JUDGE FAHEY: I see, okay.

21 MR. LANG: So that - - - that is the law - - -

22 JUDGE FAHEY: So those privacy protections that
23 are, like, physician - - - patient-physician privileges are
24 in place, you're saying, because of this?

25 MR. LANG: Well, I'm saying that the Comptroller



1 is bound by Public Officers Law 92(1) and 92(1)(a) which
2 requires the Comptroller to keep this patient - - - we're
3 talking about patient billing information - - -
4 confidential.

5 So in other words, when the Comptroller publishes
6 an audit after the fact, the Comptroller isn't releasing
7 publicly any personal information related to any one
8 individual so that the privacy interests of the patients
9 here, which are certainly legitimate and - - - and
10 important, but they're already adequately protected by - -
11 -

12 JUDGE STEIN: Why did the legislature separate
13 the two subdivisions in - - - in 2011?

14 MR. LANG: The legislature separated them in
15 2011, and that was because there was a decision that said
16 that trial subpoenas were also subject to this patient
17 authorization requirement. And - - - and so that was - - -
18 the legislature then amended (a) and split it into (a)(1)
19 and (a)(2), and that was in - - - that was in response to
20 that decision to overturn that decision.

21 And this is where the legislative history again
22 supports us because this is the assembly memo in - - - in
23 support which said that this - - - in 2011, the - - - the
24 amendment was meant to make clear that the patient
25 authorization requirement, quote, "applies only to



1 subpoenae issued during discovery", end quote. So not even
2 to all, you know, subpoenas that are part of an action - -
3 -

4 JUDGE FAHEY: Your office, though - - -

5 MR. LANG: - - - but only even a subset, that is,
6 subpoenas that are issued in discovery and not trial
7 subpoenas. And (a) (1) was separated from (a) (2) only to
8 make that more clear so (a) (1), which is what allows a
9 recipient of a document - - - of a trial subpoena to raise
10 objections, you can raise objections whether that's a trial
11 subpoena or whether that's a pre-trial discovery.

12 JUDGE FAHEY: The way I read Handler, your
13 interpretation of - - - of the statute in that context
14 would seem to be an expansion of our ruling in Handler.

15 MR. LANG: I agree that Handler is not
16 dispositive, although I would say that Handler establishes
17 several propositions that I think favor the outcome that
18 we're advocating for which is that the Comptroller has the
19 Constitutional and statutory obligation to audit these
20 state payments to - - - for services provided to members of
21 the state's health care plan.

22 Handler also recognized that a provider's billing
23 and payment records are necessary, and without them, as the
24 court said - - -

25 JUDGE RIVERA: Is there some other way you could



1 exercise and satisfy your - - - your duties with respect to
2 the audits, other than by requesting that they turn all
3 this over without having gotten patient's consent in
4 advance?

5 MR. LANG: There is just no other way to do this.
6 Petitioner had a couple of suggestions that were, you know,
7 raised for the first time.

8 JUDGE RIVERA: Well, he says you know who all of
9 the patients are; just send them the consent yourselves.

10 MR. LANG: We're talking about thousands of
11 patients. And this is just to audit one provider. So - -
12 - and when we - - - we had - - - the Comptroller had
13 selected 1,500 records, and that was only assuming that the
14 Comptroller would - - - the auditors would be allowed on
15 site. So the Comptroller - - - the auditors need even more
16 records. So you're talking about - - -

17 JUDGE RIVERA: Does the Comptroller otherwise
18 have any - - - for any other purpose, have communications
19 with the patients?

20 MR. LANG: I mean, not for the purpose of this
21 audit. I mean, the petitioner suggests that the
22 Comptroller could seek the billing records from the
23 patients individually, maybe by subpoenaing them. You
24 know, that just wouldn't be practical to subpoena thousands
25 of members of the - - - of the plan.



1 JUDGE RIVERA: It'll go over well too.

2 MR. LANG: I'm sorry?

3 JUDGE RIVERA: It'll go over very well with those
4 patients.

5 MR. LANG: Yes.

6 CHIEF JUDGE DIFIORE: Thank you, counsel.

7 MR. LANG: Thank you.

8 CHIEF JUDGE DIFIORE: Counsel?

9 MR. DIDORA: In a case of statutory
10 interpretation or really statutory construction such as
11 this, the rules are different than the rules of real
12 estate, right? Real estate, they talk about the most
13 important things being location, location, location. And
14 that's the Comptroller's argument here. They can't address
15 head on the language of 3122(a)(2), so they talk about
16 location. But nothing in this court's jurisprudence about
17 statutory interpretation addresses location as one of the
18 main factors but - - -

19 JUDGE RIVERA: Just to be clear, in (a)(2), what
20 do you think "rule" means there? What rule is the statute
21 referring to?

22 MR. DIDORA: 3122(a)(2), it refer - - - it is
23 referring to itself.

24 JUDGE STEIN: If we disagree with you on that,
25 does that end - - - end the story?



1 MR. DIDORA: I don't think so because the
2 language is still clear as to medical providers receiving a
3 subpoena for patient records, that they must be accompanied
4 by an authorization in order for it to - - - in order to
5 have a valid subpoena that the provider has to respond to.

6 JUDGE RIVERA: I'm sorry, what is the rule that
7 you say is in (2), that that word "rule" refers to; what's
8 the rule?

9 MR. DIDORA: The rule is 3122(a)(2). It is
10 referring - - -

11 JUDGE RIVERA: I understand. What is the rule?
12 I'm asking.

13 MR. DIDORA: The rule is that when a subpoena is
14 served upon a medical provider, which requests patient - -
15 - patient medical records, then the provider need not
16 respond to it unless the subpoena is accompanied by
17 authorizations and the subpoena states, on its face in
18 conspicuous type, that the provider need not respond unless
19 the authorizations are provided.

20 JUDGE RIVERA: Yeah, but that would mean the word
21 "rule" is placed before you're actually describing the rule
22 in that sentence. It seems to me an awkward placement of
23 the word, whereas it would be much more natural to refer to
24 this as "this section", if that's what you're doing.

25 MR. DIDORA: Well, if it refers to 3122 as



1 generally, the entirety of it, that doesn't really make
2 sense either because, for example, in 3122(a)(1), the
3 legislature specifically addressed subpoenas in the context
4 of a pending litigation. But in (a)(2) they use different
5 language. They didn't use, you know, a discovery - - -
6 they didn't make reference to a discovery device. They
7 referred generally to subpoenas duces tecum which - - -

8 JUDGE RIVERA: Yes, I understand but - - -

9 MR. DIDORA: - - - is different than what they
10 did in 20 - - - in (a)(1). So if they - - -

11 JUDGE RIVERA: Yeah, but in 3122(a)(1), they do
12 use the word "rule" to refer to another rule. And they do
13 use the word "section" to refer to a section. So obviously
14 - - - and this was one paragraph. It does seem to me that
15 the legislature does understand how to be much more express
16 about referring to the rule that are external to rule 3122
17 when that's what they want to do.

18 MR. DIDORA: Well, when they wanted to - - -

19 JUDGE RIVERA: They don't otherwise - - -

20 MR. DIDORA: When - - -

21 JUDGE RIVERA: They don't otherwise say what - -
22 - what you say they mean by "rule" here, which is sort of
23 within their own little subparagraph, any subparagraph,
24 refer to itself, right, sort of self-referential, and it
25 uses the word "rule". It doesn't really do that anywhere

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else.

MR. DIDORA: But when they want to refer to a specific statute, they do it specifically. They - - - just like they did in (a) (1), they said Rule 3120 or Section 3122.

JUDGE RIVERA: Yes, but I think you're making his argument because that's why you only say "this rule" because of course you're dealing with this particular rule that it's a part of.

MR. DIDORA: I don't think - - - I don't think I'm making his - - -

JUDGE RIVERA: As opposed to just the paragraph.

MR. DIDORA: - - - his argument. It's - - - it's "rule" with a small "r"; it's not a capital "R".

CHIEF JUDGE DIFIORE: Thank you, counsel.

MR. DIDORA: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of The Plastic Surgery Group, P.C. v. Comptroller of the State of New York, No. 106, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

Signature: _____

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Date: November 26, 2019

