UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JACOB TEITELBAUM, individually and as father to CHILD A and CHILD B,

Plaintiff,

-against-

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM; BLUMA TENNENBAUM; DAVID RUBENSTEIN; KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT FAMILY COURT OF ORANGE COUNTY 9TH JUDICIAL DISTRICT; HON. ANDREW P. BIVONA; ATTY. MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY OF ORANGE COUNTY; ATTY. KIM PAVLOVIC; ATTY JOHN FRANCIS X. BURKE; CHILD PROTECTIVE SERVICES OF ORANGE COUNTY; DEPARTMENT OF SOCIAL SERVICES OF ORANGE COUNTY; CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1 THROUGH 95; JANE DOES 1 THROUGH 20,

Defendants.

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MEMORANDUM OF LAW

12-CV-02858 (VB)

Return Date: 10/25/2012

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF DEFENDANT KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION s/h/a KIRYAS JOEL COMM AMBULANCE CRP

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PRELIMINARY STATEMENT

Defendant KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION[1] (hereinafter referred to as "KIRYAS JOEL" or "KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION") respectfully submits this Memorandum of Law in support of its motion to dismiss the plaintiff's *pro se* Amended Complaint pursuant to Fed. R. Civ. P. 12 (b) (1) and Fed. R. Civ. P. 12 (b) (6) on the grounds that (1) defendant KIRYAS JOEL is not a state actor for purposes of liability under 42 U.S.C. § 1983; (2) plaintiff fails to state a claim of conspiracy under 42 U.S.C. § 1983 or 42 U.S.C. § 1985; and (3) plaintiff fails to state a claim for negligent infliction of emotional distress, together with such other and further relief as this honorable Court seems just and proper.

STATEMENT OF FACTS

The facts cited within are taken from plaintiff's *pro se* Amended Complaint[2] and attachments. They are presumed to be true and accurate only for the purposes of this motion to dismiss. Plaintiff Jacob Teitelbaum is a resident of an ultra-Orthodox, Hasidic community located in the Village of Kiryas Joel, Town of Monroe, County of Orange, State of New York. (AC, ¶ ¶ 1, 4). This action is brought by plaintiff on behalf of himself and his two minor children, Child "A" and Child "B" (AC, ¶ ¶ 4, 9).

A. Neglect Proceedings

On or about April 27, 2010, Child "A" ingested an indeterminate amount of Tylenol. (AC, p. 8). Plaintiff's wife called defendant KIRYAS JOEL to come to plaintiff's residence for assistance. (AC, p.8). Plaintiff's wife and Child "A" were then taken to Presbyterian hospital by

[1] Plaintiff has identified KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION as "Kiryas Joel Comm Ambulance Crp" and as "Hatzalah EMS."
[2] References to plaintiff's *pro se* Amended Complaint will be listed as "AC," followed by the paragraph or page in question.

Defendant KIRYAS JOEL. (AC, pp.8-9). Defendant Child Protective Services (hereinafter referred to as "CPS") removed Child "A" and Child "B" from the custody of plaintiff and his wife on or about April 28, 2010. (AC, p.9). Orange County Department of Social Services (hereinafter referred to as "DSS") initiated a neglect proceeding against plaintiff and his wife shortly thereafter. (AC, p.9). The result of this neglect proceeding was an adjournment in contemplation of dismissal with respect to plaintiff's wife, and a finding of neglect against plaintiff. (AC, p.10). Child "A" and Child "B" were returned to the custody of plaintiff and his wife on or about September 7, 2010. (AC, p.10).

On or about September 16, 2010, Child "B" did not wake up from his usual daytime nap as a result of ingesting an undetermined amount of plaintiff's psychotropic medication. (AC, pp.10-11). Defendant KIRYAS JOEL was called by plaintiff's wife, who arrived at plaintiff's residence promptly. (AC, p.10). Child "B" was hospitalized at Westchester Medical Center. (AC, p.11). DSS again removed plaintiff's children from the custody of plaintiff and his wife, and a violation petition was filed against plaintiff and his wife on October 25, 2010. (AC, p.11).

The neglect petition against plaintiff's wife was dismissed in January, 2011 by the Orange County Family Court (hereinafter referred to as "Family Court") (AC, p.11). Nevertheless, Family Court made a finding of neglect against plaintiff and ordered supervised visitation between plaintiff and his children (AC, p.11 and AC at Exhibit "A").

On or about July 18, 2011, plaintiff was taken by defendant KIRYAS JOEL to Bellevue Hospital Center, a mental institution. (AC, p.14). Plaintiff was released from the hospital with the assistance of his friend, Mr. Ben Friedman. (AC, p.14). On or about July 19, 2011, defendant KIRYAS JOEL returned to the area of plaintiff's residence. (AC, p.14). After KIRYAS JOEL departed without plaintiff, plaintiff checked himself into Arden Hill Hospital. (AC, p.14).

Arden Hill Hospital released plaintiff from custody on the sole condition that he not return to his own home, an order which he subsequently violated. (AC, p.15). Plaintiff's wife then contacted defendant KIRYAS JOEL and asked them to remove plaintiff from their home. (AC, p.15). Plaintiff's wife was later told by the New York State Police that the only way plaintiff could be removed from their home was through the family court system. (AC, p.15).

In December, 2011 and January, 2012, plaintiff unsuccessfully petitioned Family Court to remove Defendant John Francis X. Burke as his counsel. (AC, p.24).

In January, 2012, plaintiff filed a motion with the Family Court that sought the determination that the involvement of CSS and DSS was motivated by politics. (AC, p.18, 22-23). Family Court determined that plaintiff's motion was frivolous and denied it in February, 2012. (AC, p.22-23).

DSS filed a petition to terminate the parental rights of plaintiff and his wife on January 25, 2012. (AC, p.25). The Court mandated that plaintiff and his wife undergo psychiatric evaluations. (AC, p.25). As a result of the psychiatric evaluation, DSS withdrew its petition for termination of parental rights from plaintiff and his wife. However, Child "A" and Child "B" remain in the custody of DSS and have been placed in foster care with defendants Joel and Bluma Tennenbaum. (AC, p.26).

B. Plaintiff's Claims

Plaintiff initiated this action by filing a complaint, *pro se*, on April 11, 2012. Plaintiff filed a *pro se* Amended Complaint on June 20, 2012. Plaintiff has pleaded four separate causes of action which allege claims under 42 U.S.C. §1983 and 42 U.S.C. §1985, in addition to state law claims for the negligent infliction of emotional distress and the intentional infliction of

emotional distress. The action for the intentional infliction of emotional distress does not allege any claim against defendant KIRYAS JOEL.

Plaintiff's first and second causes of actions are brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1985. Plaintiff has alleged that multiple defendants, acting individually and in concert, engaged in the violation of his constitutional rights. Particularly, plaintiff has claimed that the defendants:

1. Deprived plaintiff of custody and reasonable and unrestricted access to his children;
2. Facilitated and confined the plaintiff to Bellevue Hospital Center, a mental institution; and
3. Deprived plaintiff of his constitutional rights for "reasons that are based on the [sic] tenants of the religious community prevalent in the area and contrary to the interests of plaintiff." (AC, p.29-30).

Plaintiff's third cause of action puts forth a claim for the negligent infliction of emotional distress. This is based on the allegation that multiple defendants, acting individually and/or in cooperation with one another, negligently inflicted emotional distress on the plaintiff:

1. To force a separation and divorce between plaintiff and his wife by offering to reunite plaintiff's wife with their children in exchange for separating from and divorcing plaintiff;
2. To further the goals of certain of the defendants by removing plaintiff's children from his custody and care; and
3. Plaintiff continues to be separated from his family as a result of defendant's negligent actions. (AC, p.30-31).

Plaintiff's fourth cause of action asserts a claim for the intentional infliction of emotional distress. This cause of action is not asserted against defendant KIRYAS JOEL and will not be addressed in the within Memorandum of Law. This claim is made against defendants Juda Katz, Chaya Katz, Yoel Tennenbaum and Bluma Tennenbaum. Plaintiff alleges that these parties "conspired with one another to facilitate their own goals to separate the Plaintiff and his wife and children and in doing so Intentionally Inflicted Emotional Distress on the person of the Plaintiff." (AC, pp. 31). Plaintiff alleges that defendants Katz' and Tennenbaum's:

1. Took custody of plaintiff's children;
2. Caused plaintiff's children to call other individuals mommy and daddy;
3. Attempted to divide plaintiff and his wife, and counseled plaintiff's wife to divorce plaintiff by using regained custody of their children as an incentive to do so;
4. Caused false and misleading information to be disseminated in the Hasidic community of the plaintiff, attempting to bring dishonor and shame upon plaintiff; and
5. Have acted to permanently deprive plaintiff of any access to his children. (AC, p.31-32).

ARGUMENT

POINT I

LEGAL STANDARD FOR MOTION TO DISMISS

"A motion to dismiss may be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. ***Warren v.***

Goord, 476 F.Supp. 2d 407, 409 (S.D.N.Y. 2007) (internal citations and quotations omitted). On a Rule 12 (b) (6) motion, the function of the court "is not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient. ***Goldman v. Belden***, 754 F.2d 1059, 1067 (2d Cir. 1985). "In considering the motion, the court must examine the factual allegations of the complaint, including exhibits to the complaint and documents or statements incorporated in it by reference." ***Romer v. Morgenthau***, 119 F.Supp.2d 346, 352 (S.D.N.Y.) The Supreme Court of the United States stated that though a motion to dismiss "must take all of the factual allegations in the complaint as true, [it is] not bound to accept as true a legal conclusion couched as a factual allegation." ***Ashcroft v. Iqbal***, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949-50 (2009). This standard was reiterated in ***Woodward v. Office of Dist. Atty.***, 689 F. Supp. 2d 655, 658 (S.D.N.Y. 2010), where the Court ruled that "allegations that are no more than legal conclusions are not entitled to the assumption of truth." (internal citation and quotation omitted). The Second Circuit has stressed that this Rule 12 (b) (6) motion standard applies with particular force when a plaintiff alleges civil rights violations or appears *pro se.* ***Romer***, F.Supp.2d at 353.

Defendant KIRYAS JOEL respectfully submits that based on the arguments set forth below, plaintiff's Amended Complaint should be dismissed as against the KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION.

POINT II

PLAINTIFF'S FIRST CAUSE OF ACTION UNDER 42 U.S.C. § 1983 SHOULD BE DISMISSED

A. Defendant KIRYAS JOEL, a volunteer ambulance company, is not a state actor for purposes of 42 U.S.C. § 1983

The Plaintiff alleges that the KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION is liable to Mr. Teitelbaum, individually, and as a father to Child "A" and Child "B" under 42 U.S.C. §1983 and 42 U.S.C. §1985. The elements for a claim for relief under 42 U.S.C. §1983 are:

1. A violation of a right protected by the Federal Constitution;
2. Proximately caused;
3. By the conduct of a person; and
4. Who acted under color of any statute, ordinance, regulation, custom or usage of any State.

"In order to prevail on a federal civil rights action under Section 1983, a plaintiff must demonstrate: (1) the deprivation of any rights, privileges or immunities secured by the Constitution and laws; (2) by a person acting under the color of state law. ***Hollman v. County of Suffolk***, 2011 WL 2446428, at *4 (E.D.N.Y. June 15, 2011). Even if the plaintiff has sufficiently alleged a constitutional injury, a claim under Section 1983 will not be successful unless it is shown that the injury in question was caused by a party that whose actions at the time were under the "color of state law." ***Id.*** Therefore, the pivotal question becomes whether or not that "alleged infringement of federal rights is 'fairly attributable to the state.'" ***Hollman***, citing ***Lugar v. Edmonson Oil Co.***, 457 U.S. 922, 937 (1982) and ***Wyatt v. Cole***, 504 U.S. 158, 161 (1992) (affirming that"[t]he purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails."); ***Tancredi v. Metro Life Ins. Co.***, 316 F.3d 308, 312 (2d Cir.2003) ("A plaintiff pressing a claim of violation of his constitutional rights under § 1983 is thus required to show state action.").

In this case, the Plaintiff cannot prove KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION was a "State actor" for purposes of §1983 litigation. Indeed, generally speaking, private medical personnel are not State actors and do not act under color of State Law for §1983 purposes. See, ***Morse v. City of New York***, 2001 WL 968996 (not reported in Federal Supplement) (S.D.N.Y. 2001). See also, ***Sykes v. McPhillips***, 412 F. Sup 2d 197 (N.D. N.Y. 2006).

Plaintiff states that defendant KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION, along with other enumerated parties, "in their capacities as State run entities and/or agents of the State of New York or the various political subdivisions contained therein, and acting under the Color of Law, did, both individually and in cooperation with one another, deprive the Plaintiff of his Constitutional Rights pursuant to 42 U.S.C. § 1983 by and through the 14th Amendment to the United States Constitution." (AC, ¶ 219).

Plaintiff states that on or about April 14, 2010, defendant KIRYAS JOEL arrived at the home of Defendants Juda and Chaya Katz but did not take any further action. (AC, ¶39-40). Plaintiff asserts that on or about April 27, 2010, defendant KIRYAS JOEL was contacted by plaintiff's wife. (AC, ¶43). This was because it was possible that plaintiff's child, "Child 'A,'" ingested Tylenol. (AC, ¶43). After arriving at Plaintiff's residence, defendant KIRYAS JOEL transported Plaintiff's wife to the appropriate medical institutions. (AC, ¶49). Plaintiff states that on or about September 16, 2010, Plaintiff's wife telephoned defendant KIRYAS JOEL on account of Child 'B' not waking from his usual nap. (AC, ¶¶ 69-70). Defendant KIRYAS JOEL arrived at Plaintiff's residence and transported "Child 'B'" to Westchester Medical Center. (AC, ¶71). Plaintiff alleges that on or about July 18, 2011, defendant KIRYAS JOEL transported Plaintiff to Bellevue Hospital Center. (AC, ¶94). Then, on or about July 19, 2010, Plaintiff

states that defendant KIRYAS JOEL sought to again transport Plaintiff to the appropriate medical facility. (AC, ¶99). Plaintiff asserts that on or about September 8, 2011, defendant KIRYAS JOEL transported Plaintiff's wife to NY Presbyterian in Westchester County, where she was institutionalized for two and a half weeks. (AC, ¶¶118, 121). After Plaintiff's wife was released from NY Presbyterian, plaintiff alleges that on or about October 6, 2011, plaintiff's wife's parents contacted defendant KIRYAS JOEL. (AC, ¶¶124-125). Defendant KIRYAS JOEL arrived at plaintiff's residence and transported plaintiff's wife to Orange County Horton Medical Center. (AC, ¶127).

The law with reference to volunteer ambulance associations and their employees is that they do not qualify as State actors for purposes of §1983 claims. ***Hollman***; ***Spencer v. Eckman***, not reported in Federal Supp.2d 2005 WL 711511 (E.D.PA); ***McKinney v. West End Volunteer Ambulance Association***, 821 F. Supp.1012 (E.D.PA 1992). This classification was upheld by Judge Feuerstein, who ruled that a volunteer ambulance company was not a state actor for purposes of asserting claims under Section 1983. ***Glowczenski v. Taser Int'l Inc.***, CV04-4052(WDW), 2010 WL 1948249 (E.D.N.Y. May 13, 2010).

The presence of defendant KIRYAS JOEL was at all times requested by plaintiff's wife, other familial relations and various local governmental actors. At all times in the plaintiff's Amended Complaint, defendant KIRYAS JOEL's actions were attributable to its function as a volunteer ambulance association.

B. Plaintiff has failed to allege a §1983 conspiracy

"To succeed on a § 1983 conspiracy claim, a plaintiff must prove: "(1) an agreement between a state actor and a private party; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." ***Parent v. New York***, 786

F. Supp. 2d 516, 539 (N.D.N.Y. 2011) aff'd, 11-2474-CV, 2012 WL 2213658 (2d Cir. June 18, 2012), quoting ***Ciambriello v. Cnty. of Nassau***, 292 F.3d 307, 324–25 (2d Cir.2002).

> A plaintiff is not required to list the place and date of defendants meetings and the summary of their conversations when he pleads conspiracy, but the pleadings must present facts tending to show agreement and concerted action. Without a meeting of the minds, the independent acts of two or more wrongdoers do not amount to a conspiracy. ***Fisk v. Letterman***, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005) (internal citations omitted).

The plaintiff "must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." ***Green v. City of Yonkers***, (S.D.N.Y. 2012).

"Conclusory allegations that a private person acted in concert with a state actor are insufficient to maintain a conspiracy claim under § 1983." ***Parent v. New York***, 786 F. Supp. 2d at 539 (N.D.N.Y. 2011). A complaint which only contains "conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." ***Boddie v. Schnieder***, 105 F.3d 857, 862 (2d Cir. 1997) (internal quotations and citations omitted).

At bar, plaintiff has failed to allege any factual allegations to support his claim that a conspiracy existed between defendant KIRYAS JOEL and any of the other named defendants. Plaintiff simply alleges in a conclusory manner that the named defendants acted "in cooperation with one another [to] deprive the Plaintiff of his Constitutional Rights pursuant to 42 USC §1983 by and through the 14th Amendment to the United State[s] Constitution." (AC, ¶219). Plaintiff's conclusory allegation is not sufficient to maintain a conspiracy claim under §1983 and therefore his claim should be dismissed. ***Brown v. Legal Aid Society***, 367 Fed.Appx. 215, 216 (2d Cir. 2010); ***Respass v. New York City Police Dept.***, 852 F.Supp.173, 178-179 (E.D.N.Y. 1994).

Therefore, your affirmant respectfully submits that Plaintiff's §1983 claims must fail as against this defendant as it is not a State actor and no conspiracy existed. Therefore, we respectfully request that the Court dismiss this claim.

POINT III

PLAINTIFF'S SECOND CAUSE OF ACTION UNDER 42 U.S.C. §1985 SHOULD BE DISMISSED BECAUSE PLAINTIFF HAS FAILED TO PLEAD THE ELEMENTS OF CONSPIRACY

"In order to state a claim under Section 1985(3), a plaintiff must allege that (1) he was a member of a protected class, (2) that the defendants conspired to deprive him of his constitutional rights, (3) that the defendants acted with class-based, invidiously discriminatory animus, and (4) that he suffered damages as a result of the defendants' actions. ***Di Costanzo v. Henriksen***, 94 1995 WL 447766 at *3 (S.D.N.Y. July 28, 1995).

As set forth above, plaintiff has failed to allege a conspiracy, and as such, plaintiff's second cause of action should be dismissed (see id.).

POINT IV

PLAINTIFF'S THIRD CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

Plaintiff's third cause of action sounds in negligent infliction of emotional distress. (AC, p.30). "A cause of action for negligent infliction of emotional distress must be premised upon the breach of a duty owed to plaintiff which either unreasonably endangers the plaintiff's physical safety, or causes the plaintiff to fear for his or her own safety. ***Matthews v. Malkus***, 377 F. Supp. 2d 350, 361 (S.D.N.Y. 2005).

> This tort has been recognized in New York only where the plaintiff can establish one of the following: she suffered some physical trauma or she was caused to fear for her physical safety; she was within the so-called 'zone of danger' when an immediate family member was killed or injured; she was wrongly notified of the

> death of a near relative; or the mortal remains of a deceased family member were improperly handled. ***Nevin v Citibank, N.A.***, 107 F.Supp 2d 333, 346 (S.D.N.Y. 2000) (internal citations omitted).

"Thus, the parameters of this tort are extremely narrow." (***Id.***).

> Furthermore, just as in a cause of action for intentional infliction of emotional distress, negligent infliction of emotional distress must be supported by allegations of conduct by the defendants 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.' Such extreme and outrageous conduct must be clearly alleged in order for the complaint to survive a motion to dismiss. ***Matthews v. Malkus***, 377 F. Supp. 2d at 361, quoting ***Murphy v. American Home Prods. Corp.***, 58 N.Y.2d 293, 303 (1983), quoting ***Restatement [Second] of Torts*** § 46, Comment d).

At bar, plaintiff has not alleged any duty that KIRYAS JOEL owed to him. Additionally, plaintiff does not allege that he suffered any physical injury as a result of the actions by KIRYAS JOEL. Moreover, no reasonable trier of fact could arrive at the conclusion that defendant KIRYAS JOEL did anything that unreasonably endangered plaintiff's physical safety. The other parameters of this tort are not applicable in the present case. Furthermore, plaintiff has failed to allege any outrageous or extreme conduct on the part of KIRYAS JOEL. The allegations suggest that defendant KIRYAS JOEL acted pursuant to its lawful duties as a volunteer ambulance company. Finally, as discussed *supra*, plaintiff has only conclusorily alleged a conspiracy between the multiple defendants without any factual allegations or evidence to support such a claim. Based on the foregoing, it is respectfully submitted that plaintiff has failed to allege a claim for negligent infliction of emotional distress and therefore, the cause of action should be dismissed.

POINT V

NEW YORK PUBLIC HEALTH LAW § 3013 PROVIDES IMMUNITY FOR A VOLUNTARY AMBULANCE SERVICE

Public Health Law § 3013 provides a voluntary ambulance service and any member thereof, an immunity for liability to claims for damages or death sustained by the reason of any act or omission in rendering medical assistance. Liability may only attach in cases where it is established that injury or death was caused by the gross negligence on the part of the voluntary responder. ***Rider v. Gaslight Tavern Corp***., 125 A.D.2d 144. Gross negligence differs in kind not only degree from claims of ordinary negligence and evidences a reckless disregard for the rights of others and smacks of intentional wrongdoing. See, ***Colnaghi,USA v. Jeweler's Protection Services***, 81 N.Y.2d 821. The Court of Appeals has held that proof of gross negligence must evidence such a "reckless disregard" and must be "termed as the failure to exercise even slight care". See, ***Colnaghi,*** *supra* at 823; ***Food Pageant v. Consolidated Edison Corp***., 54 N.Y.2d 167, 172. Phrased differently, the act or omission must be of an aggravated character as distinguished from the failure to exercise ordinary care, and requires a much higher level of culpability than ordinary negligence. See, ***Vecchione v. Amica Mutual Insurance Company***, 274 A.D.2d 576.

The Appellate Division, Second Department is in full accord with the New York State Court of Appeals on these issues. The Appellate Division decisions have routinely held that a defendant volunteer ambulance corps and its members are relieved from liability absent competent, admissible evidence of gross negligence. If no issue is found, summary judgment is the appropriate remedy. See, ***Kapinos v. Alvaravo***, 143 A.D.2d 332 (2d Dept. 1988); ***Ciriello v. Virgues***, 156 A.D.2d 417. Accord, ***O'Leary v. Greenpoint Fire Department***, 276 A.D.2d 539 (2d Dept. 2000).

In this case, the admissible evidence has shown that an ambulance corps was requested at the behest of plaintiff, plaintiff's wife, local authorities such as Department of Social Services, and familial relations, among others. The evidence has established that ambulance corps at all times sought to safely transport a combative patient.

Moreover, the Plaintiff has not offered any authority to support the proposition that a volunteer ambulance company has any power to disregard a lawful command from local authorities with respect to being dispatched to plaintiff's residence or to institutionalize plaintiff against his will.

Under these facts, your affirmant respectfully submits that there is no evidence of any gross negligence on behalf of the voluntary ambulance corps or its crew. Therefore, the claims against Defendant KIRYAS JOEL must be dismissed. It is also respectfully submitted that the Plaintiff's Summons and Complaint is devoid of any allegations of gross negligence but only sounds in negligent infliction of emotional distress. Therefore, the pleading fails to state a cause of action pursuant to the very terms of the Public Health Law §3013.

CONCLUSION

Based on the foregoing arguments, it is respectfully submitted that plaintiff's Amended Complaint should be dismissed in its entirety as against defendant KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION.

Dated: Mineola, New York
September 20, 2012

Respectfully submitted,

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By: _____
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