

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1699**

**CA 03-01549**

PRESENT: PIGOTT, JR., P.J., WISNER, KEHOE, LAWTON, AND HAYES, JJ.

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AMY D'ANGELIS AND JOSEPH D'ANGELIS, INDIVIDUALLY AND  
AS PARENTS AND NATURAL GUARDIANS OF DAVID D'ANGELIS,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

BUFFALO GENERAL HOSPITAL, DR. DENNIS WEPPNER, DR.  
ABRAHAM SKLAR, AND UNIVERSITY GYNECOLOGISTS &  
OBSTETRICIANS, INC., DEFENDANTS-APPELLANTS.  
(APPEAL NO. 3.)

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GIBSON, MC ASKILL & CROSBY, LLP, BUFFALO (KATHLEEN M. SWEET OF  
COUNSEL), FOR DEFENDANT-APPELLANT BUFFALO GENERAL HOSPITAL.

BROWN & TARANTINO, LLP, BUFFALO (MARGARET K. HEY OF COUNSEL), FOR  
DEFENDANTS-APPELLANTS DR. DENNIS WEPPNER, DR. ABRAHAM SKLAR, AND  
UNIVERSITY GYNECOLOGISTS & OBSTETRICIANS, INC.

GAIR, GAIR, CONASON, STEIGMAN & MACKAUF, NEW YORK (RHONDA E. KAY OF  
COUNSEL), FOR PLAINTIFFS-RESPONDENTS.

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Appeals from an order of Supreme Court, Erie County (Howe, J.),  
entered July 10, 2003, which, inter alia, denied defendants' motion  
and cross motion for a protective order and directed defendant Buffalo  
General Hospital to provide plaintiffs with a written evaluation of a  
nonparty physician submitted to its quality assurance committee.

It is hereby ORDERED that the order so appealed from be and the  
same hereby is unanimously modified on the law by granting those parts  
of the motion and cross motion for a protective order with respect to  
the written evaluation of Scott Zuccala, M.D. submitted to the quality  
assurance committee of defendant Buffalo General Hospital and vacating  
the second ordering paragraph and as modified the order is affirmed  
without costs.

Memorandum: Defendants appeal from an order that, inter alia,  
denied those parts of their respective motion and cross motion for a  
protective order in this medical malpractice action and directed that  
defendant Buffalo General Hospital (Hospital) provide plaintiffs with  
certain written material. The proceedings and records of a medical  
review committee are not subject to discovery when such committee is  
performing "any medical or quality assurance review function"  
(Education Law § 6527 [3]; see Public Health Law § 2805-m; *Logue v*  
*Velez*, 92 NY2d 13, 16-17; *Bryant v Bui*, 265 AD2d 848, 849). However,

statements of a defendant doctor made before a peer review board or for quality assurance evaluation are not privileged when they relate to the subject matter of the litigation (see *Bryant*, 265 AD2d at 849). Thus, we conclude that Supreme Court erred in ordering the disclosure of the written evaluation of Scott Zuccala, M.D., a nonparty physician, submitted to the Hospital's quality assurance committee (see *Di Chiara v Kaleida Health*, 306 AD2d 901, 902), and we modify the order accordingly. We further conclude that the court properly permitted the disclosure of defendant Dr. Dennis Weppner's statement during the quality assurance committee meeting concerning plaintiff mother's labor and delivery (see *Koithan v Zornek*, 226 AD2d 1080).

Entered: December 31, 2003

JOANN M. WAHL  
Clerk of the Court