SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE **PART** 12

Justice

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FELIPA GARCIA,

Plaintiff,

- v -

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Defendant.

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INDEX NO. 159046/2020

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8-21, 24-35, 37-39 were read on this motion to dismiss.

By notice of motion, defendant moves, pre-answer, for an order dismissing the complaint. Plaintiff opposes.

In this action, plaintiff sues defendant for injuries she allegedly sustained in April 2020 while admitted as a patient at defendant's medical facility, Bellevue Hospital Center, when she fell while attempting to use the bathroom unassisted. Among plaintiff's allegations are that defendant failed to supervise her properly, provide her with necessary assistance, ensure that the guardrails on her bed were in place, monitor her, and respond timely to her requests for help using the bathroom. (NYSCEF 1).

I. CONTENTIONS

Defendant argues that, by virtue of New York's Emergency or Disaster Treatment Protection Act (EDTPA) (Pub Health Law §§ 3080-82) and the federal Public Readiness and Emergency Preparedness Act (PREP) (42 US § 247d-6d, *et seq.*), it is immune from liability and alleges that, along with other COVID-19 patients, plaintiff was being treated at Bellevue for

COVID-19 in a special unit under specific care and guidelines for treatment and isolation of patients. It observes that essentially, plaintiff's theory of liability against it is based on conduct related to proper staffing, which is specifically exempted as bases for liability under the EDTPA. (NYSCEF 9). Defendant submits affidavits from a physician and nurse, each attesting that plaintiff's treatment at Bellevue was affected and impacted by the hospital's response to COVID-19 and its treatment of patients suffering from it. (NYSCEF 15, 16).

Plaintiff denies that the EDTPA immunizes all acts or omissions occurring at a medical facility during the pandemic, and maintains that defendant fails to establish a basis for claiming that its negligence resulted from staffing or other personnel issues, as its employees' affidavits generally reference conditions at Bellevue during the pandemic and do not relate to the specific care rendered to plaintiff. (NYSCEF 25).

In reply, defendant reiterates that the EDTPA applies to plaintiff's claims and denies that any exception applies. Therefore, it asserts, the claims are barred and frames the pertinent issue as whether plaintiff's treatment was impacted by defendant's response to the COVID-19 pandemic, observing that the EDTPA does not require a causal nexus between the response and the harm suffered by a plaintiff. (NYSCEF 26).

After the motion's return date, the parties submitted new decisions related to the EDTPA. (NYSCEF 34-38).

II. ANALYSIS

The EDTPA was enacted during and in response to the COVID-19 pandemic, when state hospitals were inundated with COVID-19 patients and hospital resources and facilities were strained and their ability to provide sufficient care for all of their patients was stymied. In recognition thereof, the EDTPA was enacted to promote public health, safety, and welfare by

"broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with" the pandemic. (Pub. Health Law § 3080-D).

Pursuant to the EDTPA, a medical facility is immune from liability for harm or damages sustained as a result of an act or omission "in the course of arranging for or providing health care services," if:

(a) the health care facility or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law;
(b) the act or omission occurs in the course of arranging for or providing health care services and the treatment of the individual is impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and
(c) the health care facility or health care professional is arranging for or providing health care services in good faith.

(Pub Health Law § 3082).

Covered health care services are those "provided by a health care facility or a health care professional, regardless of the location where those services are provided, that relate to: (a) the diagnosis, prevention, or treatment of COVID-19; (b) the assessment or care of an individual with a confirmed or suspected case of COVID-19; or (c) the care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency declaration." (Pub Health Law § 3081[5]).

There is no immunity, however, if the harm or damage was caused by acts or omissions resulting from willful or intentional criminal misconduct, gross negligence, reckless misconduct, or the intentional infliction of harm, except that "acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal

misconduct, gross negligence, reckless misconduct, or intentional infliction of harm." (*Id.*). The EDTPA was repealed in April 2021.

There is no dispute that plaintiff's claims arise from the alleged failure to supervise, monitor, and respond to her when she needed assistance to use the bathroom, all of which sound in negligence and implicate resource or staffing shortages. It is also undisputed that plaintiff was being treated at Bellevue for COVID-19 during the height of the pandemic and there is no allegation that defendant failed to act in good faith in rendering her care. Defendant thus establishes that plaintiff's claims are precluded by the EDTPA.

Contrary to plaintiff's argument, the EDTPA confers blanket immunity on negligence occurring during the pandemic, due to the wisdom of the Legislature in recognizing that treatment of COVID-19 patients was a priority and that a medical facility be given leeway in deciding how to allocate treatment and resources in the immediate, emergent, and highly-fraught environment. Moreover, nothing in the statute requires that the negligent act be directly related to the treatment of a patient for COVID-19. Rather the acts must constitute a response to the facility's treatment of COVID-19 patients in general.

Given the conditions at Bellevue as alleged by defendant in terms of the number of COVID-19 patients that it was treating, the amount of care they required, the gravity of their conditions, and the staffing issues presented by both the illness and the required treatment, it is reasonably inferred that Bellevue was unable to help plaintiff promptly due to the need to help other COVID-19 patients with more immediate and critical needs due to a shortage of available staff.

Other courts have reached the same result in dismissing claims against medical facilities based on the EDTPA. (*See Damon v Clove Lakes Healthcare and Rehab. Ctr., Inc.*, Sup Ct,

Richmond County, June 17, 2022, Marrazzo, Jr., J., index No. 150031/22; *Graves v Suffolk County*, Sup Ct, Suffolk County, Apr. 13, 2022, Condon, J. Index No. 603705/21; *Saltanovich v Sea View Hosp. Rehab. Ctr.*, Sup Ct, Richmond County, May 18, 2022, Aliotta, J., index No. 151212/21).

In one of the cases cited by plaintiff, in contrast to the instant case, the defendant offered no evidence as to how the decedent's care was impacted by the facility's response to COVID-19, nor did it establish that it had acted in good faith (NYSCEF 34; *Robertson v Humboldt House Rehab. & Nursing Ctr.*, Sup Ct, Erie County, Mar. 14, 2022, Ogden, J., index No. 805232/21). In the other case, it was determined that the repeal of the EDPTA was retroactive (NYSCEF 37; *Whitehead v Pine Haven Operating LLC*, Sup Ct, Columbia County, June 8, 2022, Zwack, J., index No. E012022017995), an issue not presented here and in any event, the decision has no precedential value.

In light of this result, the parties' arguments related to the federal PREP act need not be considered.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant's motion to dismiss is granted, and the complaint is dismissed, and the clerk is directed to enter judgment accordingly.

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7/6/2022
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE