

**Vajpayee v Shinbach**

2026 NY Slip Op 30975(U)

March 6, 2026

Supreme Court, New York County

Docket Number: Index No. 805015/2020

Judge: Kathy J. King

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

INDEX NO. 805015/2020
MOTION DATE 3/11/2025
MOTION SEQ. NO. 002

NISHANT VAJPAYEE,
Plaintiff,

- v -

KENT SHINBACH, M.D.,
Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and oral arguments having been heard, Defendant Kent Shinbach, M.D. ("Dr. Shinbach") moves for an order pursuant to CPLR 3212, dismissing Plaintiff's Verified Complaint and granting summary judgment in favor of Defendant Kent Shinbach, M.D. on the grounds that Plaintiff's claims are without merit and present no triable issue of fact for a jury, thereby warranting direction of a judgment as a matter of law in favor of the movant.

Plaintiff opposes the motion.

BACKGROUND

On October 10, 2018, Plaintiff Nishant Vajpayee presented to defendant, a board-certified psychiatrist, for treatment related to "marital discord." Based on this single office visit and information provided by an informant, defendant diagnosed plaintiff with "Bipolar Disorder - Type 2 with rapid cycling features." Defendant prescribed Lamictal (25mg) and directed an "accelerated" dosing schedule, increasing the dosage at a rate twice as fast as the manufacturer's recommendation.

Between October 30 and November 2, 2018, Plaintiff's condition deteriorated, and on October 30 Plaintiff sought treatment from an internist for a sore throat, swelling, and fever; he was prescribed a Z-Pak for suspected strep. On October 31 Plaintiff developed a rash on his ears. He presented to New York Presbyterian Lower Manhattan Hospital (NYPH) with fever, joint pain, and swollen lymph nodes. While NYPH staff suspected a viral syndrome, plaintiff was instructed to discontinue Lamictal. On November 2 Plaintiff visited an urgent care center with mouth ulcers and a progressive rash. After a consultation between Defendant and the urgent care physician regarding the onset of Stevens-Johnson Syndrome (SJS) or Toxic Epidermal Necrolysis (TEN), Plaintiff was transferred to NYU Langone.

Plaintiff was subsequently diagnosed with SJS-TEN overlap syndrome, a severe immune-response complication known to be associated with Lamictal therapy.

On January 15, 2020, Plaintiff commenced this action alleging causes of action in medical malpractice and lack of informed consent. Plaintiff alleges Defendant negligently diagnosed him with Bipolar Disorder Type 2, and by negligently prescribing Lamictal, resulting in Stevens-Johnson Syndrome (SJS)/Toxic Epidermolysis Necrosis (TEN), a severe skin reaction. Plaintiff further alleges that Defendant failed to disclose the risks of Lamictal or discuss alternative treatments, and prescribing Lamictal at an "accelerated" dosing schedule—twice the manufacturer's recommended rate—as the initial drug for medical management.

Defendant, thereafter, joined issue by interposing a Verified Answer on February 13, 2020, and now move for summary judgment.

Plaintiff opposes Defendant's motion.

**SUMMARY JUDGMENT AS TO MEDICAL MALPRACTICE**

A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice, and by establishing that the Plaintiff was not injured by such treatment (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept 2009]; *McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; see generally *Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]). To satisfy this burden, a defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific, and factual in nature (see *Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Joyner-Pack v Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]).

In support of Defendant's motion, Defendant submits the expert affidavit of Dr. David Scheibel ("Dr. Scheibel"), board-certified in Psychiatry and Neurology with over 40 years of medical practice. Dr. Scheibel opined to a reasonable degree of medical certainty, that Dr. Shinbach's diagnosis and treatment of Plaintiff comported with the accepted standard of psychiatric care and, therefore, did not cause the Plaintiff's alleged injuries.

Specifically, Dr. Scheibel characterizes Defendant's diagnosis of "Bipolar 2 with rapid cycling" as an "extremely precise and accurate assessment." He points to Plaintiff's reported family history and testimony regarding fluctuating moods as definitive clinical markers, noting that "fluctuating moods of this nature are inconsistent with anxiety and/or depression." According to Dr. Scheibel, Plaintiff's "cyclical" presentation—consisting of "hypomanic" up-phases

followed by prolonged depressive “down” phases—is “pathognomonic for mood disorders like bipolar disorder.” Dr. Scheibel dismisses any allegedly overlooked clinical features as “inconsequential and/or consistent” with the final diagnosis.

Dr. Scheibel further opines that Lamictal was not only an appropriate initial medication but was the best choice for Plaintiff, as it is uniquely suited to treat the rapid cycling characteristics of the disorder compared to alternative medications. Regarding the accelerated dosing schedule, Dr. Scheibel maintains it was a careful and gradual escalation in accordance with prevailing standards of care, with which he is familiar through both clinical practice and medical literature. Significantly, he asserts that Plaintiff’s allergic reaction was inevitable and that the dose escalation schedule did not increase the risk of developing SJS.

Based on Dr. Scheibel’s affirmation, the Court finds that Defendant has established prima facie entitlement to summary judgment as a matter of law as to Plaintiff’s claim of alleged malpractice.

Once Defendant makes a prima facie showing, the burden shifts to plaintiff to raise a triable issue of fact, by proffering evidence sufficient to demonstrate that a genuine issue of fact exists (*see Roques v Noble*, 73 AD3d 204, 206; *Obregon v NY & Presbyt. Hosp.*, 2012 NY Slip Op 30681[U] [Sup Ct, NY County 2012]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Here, in opposition, Plaintiff submits the affidavit of Allan S. Nineberg, M.D. (“Dr. Nineberg”), a board-certified Psychiatrist and Neurologist with over 40 years of practice. In his affidavit, Dr. Nineberg identified four departures from the psychiatric standard of care in the diagnosis and treatment of Plaintiff.

In opposition, Plaintiff submits the affidavit of Dr. Nineberg, who identifies four distinct<sup>1</sup> departures from the psychiatric standard of care regarding the diagnosis and treatment of Plaintiff.

Dr. Nineberg opines that the initial diagnosis of bipolar disorder was unsupported by the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). He asserts that Defendant failed to conduct a proper diagnostic evaluation, noting that a complex psychiatric assessment cannot be reliably performed in a single session without a detailed medical history or collateral communication. Specifically, Dr. Nineberg points to internal inconsistencies in Defendant's records. While a Bipolar diagnosis typically requires sleep disturbances, Defendant's notes indicate Plaintiff's sleep remained unchanged regardless of mood. Additionally, the records lack evidence of the manic or hypomanic episodes necessary to support the diagnosis. Dr. Nineberg characterizes the assessment as "extremely imprecise," noting that two subsequent psychiatrists provided alternative diagnoses, and that Defendant failed to verify Plaintiff's family history through clinical records or interviews.

According to Dr. Nineberg, the second departure involves the decision to prescribe Lamictal. Dr. Nineberg states that the FDA approved Lamictal primarily for maintenance therapy to delay mood episodes, not for the acute initial treatment of bipolar disorder. He opines that Defendant's "off-label" use was unsupported by any documented rationale or clinical evidence. Dr. Nineberg rejects the defense's assertion that SJS was "inevitable," concluding that had Defendant not erroneously diagnosed Plaintiff and prescribed Lamictal as a first-line treatment, Plaintiff never would have contracted the condition.

Dr. Nineberg identifies the modified dosing schedule as a third departure. He contends that the manufacturer's recommended titration schedule, adopted by the FDA, establishes the

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<sup>1</sup>The fourth departure relates to the lack of informed consent which is discussed by the Court below.

applicable standard of care given the drug's potential for deadly reactions. By accelerating the dosage at twice the recommended rate, Defendant substantially increased the risk of Plaintiff developing SJS-TEN. Dr. Nineberg further disputes the defense expert's claim that such acceleration is "prevailing practice," stating there are no peer-reviewed studies or journals to support an accelerated Lamictal titration.

The Court finds that Plaintiff has met his opposing burden and raised triable issues of fact regarding the initial diagnosis of bipolar disorder, in Defendant prescribing Lamictal, and accelerating the Lamictal dosing schedule. (*see Johnson v St. Barnabas Hosp.*, 52 AD3d 286 [1st Dept 2008], appeal denied 11 NY3d 705 [2008]; *Landau v Rappaport*, 306 AD2d 446 [2d Dept 2003]; *Nabozny v Cappelletti*, 267 AD2d 623 [3d Dept 1999]; *Johnson v Jacobowitz*, 65 AD3d 610 [2d Dept 2009]). "Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; *see Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

Accordingly, Defendant's summary judgment motion is denied as to the medical malpractice cause of action and claims.

#### **SUMMARY JUDGMENT AS TO LACK OF INFORMED CONSENT**

"To succeed in a medical malpractice cause of action sounding in lack of informed consent, a plaintiff must demonstrate that (1) the practitioner failed to disclose the risks, benefits and alternatives to the procedure or treatment that a reasonable practitioner would have disclosed and (2) a reasonable person in the plaintiff's position, fully informed, would have elected not to

undergo the procedure or treatment” (*Orphan v Pilnik*, 15 NY3d 907, 908 [2010]; Public Health Law [“PHL”] § 2805-d[1], [3]). To demonstrate prima facie entitlement to summary judgment, a defendant must show that the plaintiff was informed of the foreseeable risks, benefits, and alternatives to the prescribed treatment, including no treatment (*Smith v Cattani*, 2 AD3d 259, 259 [1st Dept 2003]; PHL § 2805-d[1]).

The case law is well settled that “[e]xpert medical testimony is required to prove the insufficiency of the information disclosed to the plaintiff” (*Orphan v Pilnik*, 15 NY3d at 908; CPLR 4401-a). Here, Defendant fails to establish prima facie entitlement to summary judgment, as the record contains conflicting evidence and expert testimony. While Dr. Scheibel opines that the standard of care only requires a physician to warn of a rash—noting that the FDA and manufacturer recommend discontinuation only upon its appearance—this is contradicted by Defendant’s own deposition testimony that he did not discuss any alternative medications with the Plaintiff. Furthermore, Dr. Scheibel’s assertion that Plaintiff “knew he had the option” of not taking the medication is insufficient to demonstrate that a proper risk-benefit analysis was communicated.

The Court notes that even if Defendant had met his initial burden, Plaintiff’s expert, Dr. Nineberg, raises triable issues of fact by opining that the failure to warn of early-onset flu-like symptoms constituted a fourth departure from the standard of care by needlessly delaying diagnosis and treatment.

Accordingly, the Defendant’s motion for summary judgment as to lack of informed consent cause of action is denied (*Rosario v Our Lady of Consolation Nursing & Rehab. Care Ctr.*, 186 AD3d 1426 [2d Dept 2020]; *Boston v Weissbart*, 62 AD3d 517 [1st Dept 2009]).

Based on the foregoing, it is hereby

**ORDERED** that defendant’s summary judgment motion (Mot. Seq. 002) is denied in its entirety; and it is further

**ORDERED** that within 20 days of entry of this order, counsel for Plaintiff shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court; and it is further

**ORDERED** that the parties shall appear for a virtual settlement/pre-trial conference on September 9, 2026, at 11am, after consultation with the Court’s Alternative Dispute Resolution (ADR) department. The ADR Order and specific date, time, and appearance link for the virtual conference shall be set forth in subsequent correspondence by the Court.

This constitutes the Decision and Order of the Court.

3/06/2026  
DATE

*Kathy J. King*  
Hon Kathy J. King, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE