

Richards v Qi Yu

2026 NY Slip Op 31081(U)

March 20, 2026

Supreme Court, Kings County

Docket Number: Index No. 512697/2023

Judge: Consuelo Mallafre Melendez

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At an IAS Term, MMESP-7 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of March 2026.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SELWYN RICHARDS,

Plaintiff,

-against-

QI YU M.D., KINGS COUNTY HOSPITAL CENTER, and
NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Defendants.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: 20 – 30, 32 – 40, 41 – 43

Defendants Qi Yu, M.D. (“Dr. Yu”), Kings County Hospital Center (“Kings County”), and New York City Health and Hospitals Corporation (“HHC”) move (Seq. No. 1) for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff’s Complaint against them in its entirety.

Plaintiff opposes the motion.

Selwyn Richards (“the patient”) commenced the action on April 28, 2023, seeking damages allegedly arising from medical care rendered at Kings County. The claims against the moving Defendants stem from treatment rendered to the patient during and immediately following a colonoscopy performed at Kings County on November 29, 2022.

On November 29, 2022, the 63-year-old patient presented to Kings County for a screening colonoscopy. At the start of the colonoscopy, the patient was administered Fentanyl and Versed. A few minutes later, the patient reported discomfort and additional doses of both medications were administered.

The patient was transferred to recovery following the procedure, and his vitals were documented to be stable. The patient was noted to be drowsy but responsive to stimuli and his abdomen was soft to touch and non-distended. The patient was not documented to have any rectal bleeding, and he was placed on his right side to promote passing gas. Approximately four hours after the patient's discharge from Kings County, he returned to the Kings County emergency room complaining of abdominal pain with nausea and vomiting. It was discovered that the patient had a perforated colon, and he underwent a colostomy on November 30, 2022, and a colostomy reversal on July 31, 2023.

Plaintiff alleges that Defendants deviated from the standard of care in failing to timely diagnose the patient's colon perforation and improperly discharging him following the colonoscopy. Plaintiff further alleges that these departures proximately caused the patient to undergo a more complicated surgical course, including a colostomy and its reversal.

In evaluating a summary judgment motion in a medical malpractice action, the court considers the "essential elements" of medical malpractice: "(1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury" (*Miller-Albert v EmblemHealth*, 231 AD3d 1147, 1148 [2d Dept 2024] [internal quotation marks and citations omitted]). "Thus, a defendant moving for summary judgment must make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the patient's injuries. To meet that burden, a defendant must submit in admissible form factual proof, generally consisting of affidavits, deposition testimony and medical records, to rebut the claim of malpractice" (*Id.*). "If the defendant makes such a showing, the burden shifts to the plaintiff to raise a triable issue of fact as to those elements on which the defendant met its prima facie burden of proof" (*Delia v Wieder*, 236 AD3d 857, 858 [2d Dept 2025]). "Generally, summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions" (*Garcia v*

Hollander, 241 AD3d 651, 653 [2d Dept 2025] [internal quotation marks and citations omitted].)

However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023]).

In support of their motion (Seq. No. 1), Dr. Yu and Kings County submit an expert affirmation from Michael Frank, M.D. (“Dr. Frank”), licensed physician board certified in internal medicine and gastroenterology.

Dr. Frank opines that the Defendants did not depart from the standard of care during or after the patient’s colonoscopy and that there were no objective signs or symptoms for Defendants to diagnose a perforation. Dr. Frank opines that it is common for patients to feel some discomfort and require additional sedation at the start of a colonoscopy and that, in this case, the patient’s initial discomfort did not signify a perforation. Dr. Frank also notes that based on clear photographs of the patient’s colon, testimony, and medical records, there is no evidence that a perforation was identifiable during the procedure. Further, Dr. Frank opines that the patient was properly monitored post-procedure and showed no signs of perforation, bleeding, or leakage and that the patient did not complain about pain. Ultimately, Dr. Frank states that there were no signs or symptoms of a perforation for diagnosis during or after the procedure.

On proximate causation, Dr. Frank opines that normal pressure with a scope can cause tension or friction on the wall of the sigmoid colon and that perforations are therefore a known risk of colonoscopies. However, Dr. Frank notes that there is no way to identify the specific cause of a perforation when it occurs hours after a colonoscopy, as was the case with the patient. The expert also states that nothing could have been done differently during the patient’s colonoscopy. Therefore, Dr. Frank opines that there is no indication that negligence caused the patient’s perforation or a failure to diagnose it.

Defendants have established prima facie entitlement to summary judgment on the issues of standard of care and proximate causation by setting forth expert opinions that the Defendants complied

with the applicable standard of care and that there was no **indication** to suspect the patient's perforation.

The burden therefore shifts to Plaintiff to raise a triable issue of fact.

In opposition, Plaintiff submits an expert affirmation from [name of expert redacted], M.D., a licensed physician board certified in vascular surgery. Plaintiff's expert **states** they completed a residency in surgery, as well as fellowships in critical care surgery and vascular surgery. A signed, unredacted copy of the expert affirmation was presented to the Court for *in camera* inspection.

As a threshold matter, the Court must first determine whether Plaintiff's expert, a vascular surgeon, is qualified to provide an expert affirmation regarding the performance of a colonoscopy. To testify on accepted practices in a medical specialty, a medical expert need not be a specialist in that field. However, the expert must possess the requisite skills, training, education, knowledge or experience from which it can be assumed that the opinion is rendered reliable (*Abruzzi v. Maller*, 221 A.D.3d 753 [2d Dept. 2023] [citing *Behar v. Coren*, 21 A.D.3d 1045, 1046-1047 [2d Dept. 2005]]). Where a physician opines outside his or her area of specialization, a foundation must be laid to support the reliability of the opinion by specifying extensive experience, specific training, or board certification in that field (*See Abruzzi*, 221 A.D.3d at 756 [quoting *Tsimber v. Fell*, 123 A.D.3d 1009 [2d Dept. 2014]]).

In *Abruzzi*, the Appellate Division held that a surgical oncology expert failed to lay the requisite foundation for opinions on medical oncology, rendering the opinions of no probative value (*See Abruzzi*, 221 A.D.3d at 757). The Court noted that the field of surgical oncology was distinct from the field of medical oncology and that the expert did not claim to have provided any prior oncology diagnoses, did not provide any credentials indicating training or experience in evaluating or treating patients in an oncology office, and did not establish his training or specific knowledge as to the standard of care involved in the medical oncology treatment of a patient (*Id.*). The expert did not state how he became familiar with the clinical standards of oncology care (*Id.*). Further, his conclusory statement of having "worked in conjunction with medical oncologists in connection with the treatment of cancer patients" was

insufficient (*Id.* [emphasis in original]). In *Abruzzi*, the Court held that conclusory assertions were insufficient to establish a reliable foundation for expert testimony outside the expert's specialty (*Id.*).

In this matter, Plaintiff's expert states that he or she completed a fellowship in surgery and critical care and is board certified in vascular surgery. Plaintiff's expert has not obtained board certification in gastroenterology. Critical care surgery and vascular surgery specialties are distinct from gastroenterology, the field of medicine routinely engaged in performing colonoscopies. Colonoscopies require specialized training during residency or fellowship in gastroenterology or colorectal surgery, which is distinct from training involved in vascular surgery. These types of physicians ultimately practice in different medical capacities, and critical care and vascular surgeons typically do not perform colonoscopies. Assuming that generally a critical care specialist is experienced in diagnosing perforations of the colon post colonoscopy, this expert does not lay a sufficient foundation as to possessing this particular experience. Since Plaintiff's expert is opining outside their field of specialization, they must lay a foundation demonstrating that they possess sufficient training, education, knowledge, or experience in colonoscopy procedures to render a reliable opinion.

Plaintiff's expert fails to do so. The affirmation indicates that the expert has performed "hundreds" of colonoscopies but does not specify over what time period or how recently the last one was performed, or whether this experience was part of their residency or other training. Similarly, Plaintiff's expert states that they "have evaluated and treated hundreds of patients with suspected colonic perforations after colonoscopy," but does not provide further detail. There is no indication whether the vascular surgeon has ever diagnosed a perforated colon or is familiar with signs and symptoms of a perforation as is claimed in this case. Plaintiff's expert does not specify any training, experience, or credentials demonstrating familiarity with the standards governing colonoscopy procedures and diagnosing perforations of the colon.

Rather, the expert states in a general manner that their familiarity with colonoscopy standards is based in part on continuing medical education and review of medical literature. Assuming the court were

to accept familiarity with literature and continuing education courses as a basis for expertise, this physician does not identify the courses taken or the literature reviewed, nor do they explain how such materials provided them with proficiency to opine on the standards governing colonoscopy procedures and its complications – or to opine on deviations from the standard of care relevant to the issues in this matter. Furthermore, the Court questions whether even the most comprehensive literature on the subject of colonoscopies can render a physician board certified in vascular surgery an expert to opine on a case claiming a departure in performing a colonoscopy and diagnosing a perforated colon.

In light of the distinct nature of gastroenterology and the absence of any articulated foundation for the expert's claimed knowledge, Plaintiff's expert has failed to demonstrate the requisite skills, training, education, knowledge, or experience necessary to render a reliable opinion.

Accordingly, the expert affirmation is of no probative value and is insufficient to defeat Defendants' prima facie showing.

Notwithstanding, assuming Plaintiff's expert was deemed qualified to render opinions herein, the affirmation would nevertheless fail to raise a triable issue of fact. Expert opinions submitted in opposition to a motion for summary judgment must address specific assertions made by the movant's expert and must set forth an explanation of the reasoning supporting the opinion while relying upon specifically cited evidence in the record (*Tsitrin v. New York Cmty. Hosp.*, 154 A.D.3d 994, 996 [2d Dept. 2017]).

Plaintiff's expert opines that Dr. Yu departed from the standard of care and failed to diagnose the patient's perforation because she did not photograph the entire proximal sigmoid colon or investigate the cause of the patient's initial discomfort, resulting in Dr. Yu administering additional doses of Fentanyl and Versed and forgoing retroflexion. Further, Plaintiff's expert opines when the patient felt discomfort at the beginning of the procedure, Defendants should have suspected a perforation and investigated the source of his pain. In addition, Plaintiff's expert alleges that the patient felt post-procedure nausea, vomiting, abdominal pain, abdominal distention, and absence of flatus and therefore should not have been

discharged. Instead, Plaintiff's expert notes that the patient should have been referred to the emergency room for x-rays or CT scans of his abdomen or pelvis to assess for pneumoperitoneum and perforation. Plaintiff's expert states that these departures from the standard of care prevented the patient's perforation from being diagnosed in a timely manner and resulted in his additional surgeries.

Here, Plaintiff's expert's opinion is conclusory and speculative and is not adequately supported by the record. Notably, Plaintiff's expert relies on factual assertions that are contradicted by the record. For example, Plaintiff's expert states that the colonoscopy was performed under intravenous sedation with Propofol. However, the medical records reflect that the patient was sedated with Fentanyl and Versed, not Propofol. Plaintiff's expert discusses the anatomy of the colon, focusing on the sigmoid colon's proximity to the rectum however the patient's perforation occurred in the proximal sigmoid. Plaintiff's expert demonstrates a lack of familiarity with the standard of care, noting how Dr. Yu did not photograph the patient's entire colon and did not proceed with retroflexion. Such inaccuracies undermine the reliability of the expert's conclusions and are speculative.

Additionally, the Plaintiff's expert's opinions concerning the alleged failure to diagnose a perforation are also based on speculation. The affirmation assumes that a perforation should have been identified during the procedure or in recovery yet does not refute Defendants' expert's opinion that the size and nature of a perforation may render it undetectable during the procedure. Nor does the expert identify any specific signs or symptoms in the record to support the opinion that Defendants should have suspected a perforation during or immediately after the colonoscopy. The Plaintiff's expert states that Dr. Yu failed to observe a perforation because of an improper view of the colon. However, the record reflects that the bowel preparation was excellent and that the procedure was performed with a clear view. Furthermore, Plaintiff's expert states that the patient's discomfort at the beginning of the procedure may have indicated a perforated colon but does not provide sufficient detail to distinguish the patient's discomfort from the pain patients typically experience at the start of colonoscopies.

In conclusion, Defendants have established their prima facie entitlement to judgment as a matter of law. Plaintiff's expert affirmation fails to establish the expert's qualifications to opine on colonoscopy procedures and, in any event, is speculative, conclusory, and unsupported by the record.

To the extent Plaintiff asserted claims for lack of informed consent, those claims are unopposed in the motion papers and are therefore dismissed.

Accordingly, it is hereby:

ORDERED that Dr. Qi Yu, Kings County Hospital Center, and New York City Health and Hospitals Corporation's motion (Seq. No. 1) for an Order, pursuant to CLR 3212, granting summary judgment in their favor, is **GRANTED**; and it is further

ORDERED that this action is **dismissed** in its entirety.

The Clerk shall enter judgment in favor of QI YU M.D. and NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, also sued herein as KINGS COUNTY HOSPITAL CENTER.

This constitutes the decision and order of this Court.

ENTER.



**Hon. Consuelo Mallafre Melendez
J.S.C.**