

State of New York Court of Appeals

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 70 SSM 2
Amber R., &c.,
Appellant,
v.
Pediatric & Adolescent Urgent
Care of Western New York, PLLC et
al.,
Respondents,
et al.,
Defendant.

Submitted by Timothy W. Hoover, for appellant.
Submitted by Kathleen M. Sweet, for respondents.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and order of Supreme Court, Erie County, reinstated. Triable issues of fact exist as to the claim for medical malpractice with respect to the placement of the endotracheal tube in the infant (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

Decided April 18, 2024