

SHORT-FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. PHYLLIS ORLIKOFF FLUG, IA Part 9
Justice

ALICJA OZUGOWSKI, Individually and as Administratrix of the Estate of ADAM OZUGOWSKI, Deceased,	Index Number..11945/02
	Motion Date...2/22/05
Plaintiff,	Motion Cal. Number.....23
-against-	

THE CITY OF NEW YORK and NEW YORK
CITY HEALTH AND HOSPITALS
CORPORATION,

Defendant.

The following papers numbered 1 to 4 read on this motion

Notice of Motion	1 - 2
Attorneys Affirmation	3
Stipulation	4

Defendants The City of New York and New York City Health and Hospitals Corporation move to reargue, and upon reargument, modify the Court's order dated June 18, 2004 by dismissing plaintiff's complainant for failure to file a timely Notice of Claim.

The motion to reargue is granted solely as to New York City Health & Hospital Corporation; the cause of action as to Defendant New York City having already been dismissed.

Plaintiff had moved to amend their notices to reflect the date of the alleged negligence from March 31, 2001 to March 25, 2001 (that was agreed to and withdrawn pursuant to stipulation (dated August 26, 2002)).

In determining whether to permit service of a late notice under General Municipal Law 50-e, a court should consider all relevant facts and circumstances, including whether an infant is involved, whether there is a reasonable excuse for the delay, whether the public corporation acquired actual knowledge of the

facts constituting the claim within 90 days or a reasonable time thereafter, . And whether the public corporation's defense would be substantially prejudiced by the delay (See, Matarrese v. New York City Health & Hospitals Corp., 215 AD2d 7 (2d Dept. 1995).

Plaintiff has a good and justifiable excuse in the minimal delay as she could not possibly know a cause of action existed until April 3, 2001 when Adam Ozugowski committed suicide.

The defendant hospital was in possession of all the medical records and had actual notice of the underlying facts. The very essence of plaintiff's claim is that the hospital deviated from good and accepted medical practice when it released plaintiff's decedent from the hospital without proper evaluation. No prejudice has been shown by the hospital.

The Notices of Claim were filed on June 29, 2001. The number of days from when the alleged malpractice was discovered, (April 3, 2001) until the Notice of Claim was served was 77 days. Even counting from the date of the alleged malpractice (March 25, 2001) (which was not discovered until April 3, 2001) the total is 96 days, six days over the statutory requirement. The Court deems this minimal under the totality of the circumstances.

Accordingly, defendant's motion to dismiss are denied.

April 7, 2005

J.S.C.