

**Zak v Brookhaven Mem. Hosp. Mem.  
Ctr.**

2007 NY Slip Op 31250(U)

May 17, 2007

Supreme Court, Suffolk County

Docket Number: 0014689/2004

Judge: Arthur G. Pitts

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**Supreme Court of the State of New York**  
**IAS Part 43- County of Suffolk**

**PRESENT:**

**COPY**

**HON. ARTHUR G. PITTS**

**JUSTICE OF THE SUPREME COURT**

JOHN M. ZAK, as Executor of the Estate of  
ANNA D. AWE, deceased,

Plaintiff,

-against-

BROOKHAVEN MEMORIAL HOSPITAL  
MEMORIAL CENTER,

Defendant.

**ORIG. RETURN DATE: 12/22/06**

**FINAL SUBMIT DATE: 3/1/07**

**MOTION SEQ. NO.: 003-MG**

**PLTF'S/PET'S ATTY:**

BAUMAN, KUNKIS & OCASIO-DOUGLAS, P.C.

By: Randolph Janis, Esq.

14 Penn Plaza-Suite 2208

New York, New York 10122

**DEFT'S/RESP'S ATTY:**

LAW OFFICES OF VINCENT D. McNAMARA

1045 Oyster Bay Road

East Norwich, New York 11732

Upon the following papers numbered 1 to 23 read on this motion / summary judgment \_\_\_\_\_  
Notice of Motion/OSC and supporting papers 1-13 ; Notice of Cross-Motion and supporting papers \_\_\_\_; Affirmation/affidavit in  
opposition and supporting papers 14-21; Affirmation/affidavit in reply and supporting papers 22-23 Other \_\_\_\_\_; (~~and after~~  
~~hearing counsel in support of and opposed to the motion~~) it is,

ORDERED that plaintiff John M. Zak, as Executor of the Estate of Anna D. Awe, deceased's  
motion for summary judgment is granted under the circumstances presented herein as to the issue of  
liability only. ( CPLR 3212)

This is an action sounding in medical malpractice and wrongful death arising out of the death of  
plaintiff's decedent Anna D. Awe on June 8, 2003 at defendant Brookhaven Memorial Hospital  
Medical Center. The following salient facts are not in dispute: Mrs. Awe was admitted to the defendant  
Hospital on April 10, 2003 with complaints of abdominal pain. She was subsequently treated for, in  
part, gastrointestinal bleeding. On May 11, 2003 the decedent was wrongly administered, through an  
intravenous drip, heparin, a medication which is contraindicated for a patient suffering from a  
gastrointestinal bleed in that it would prolong a patient's bleeding and decrease the ability to clot. The  
defendant's patient's discharge summary provided that after she underwent the infusion of heparin,  
"the patient had recurrent massive GI bleeding. The patient was taken to the operating room. Since  
then the patient had a progressive down trend of her course.....the patient did not improve in spite of  
aggressive medical care. The patient finally expired on 6/8/03."

In support of the instant motion, the plaintiff submits that heparin was wrongfully administered to the plaintiff's decedent and the mistaken use of said medication is causally related to the decedent's death. Such wrongful administration has not be controverted by the defendant.

It is well settled that "hospitals are duly charged to exercise reasonable care in safeguarding a patient and whether a breach of that duty occurs necessitates a comparison to the standard of care customarily exercised by hospitals in the community. [citations omitted] Whether defendant's employees deviated from this standard of due care cannot be determined without a full appreciation and understanding of the operational demands and practices of a medical facility. In effect, the question is one of malpractice, calling for the production of expert testimony. [citations omitted]" (*Zellar v. Tompkins Community Hospital, Inc.*, 124 A.D.2d 287, 508 N.Y.S.2d 84 [3<sup>rd</sup> Dept 1986] )

The plaintiff has proffered the affidavit of Audrey Dupree Sealey, PhD, R.N., F.N.P. who had an opportunity to review the records of the defendant Brookhaven Memorial Hospital Medical Center , the patient incident report, death certificate, pleadings, and the deposition transcripts of Nileshkumar Patel, M.D., Dianne DeStefano, R.N., and Barbara Napoli, R.N. Based upon the review of such records she determined that the plaintiff's decedent was wrongly administered an infusion of heparin which was confirmed by the Hospital's discharge summary. She further concluded that such administration was a "grave" error that deviated from good and accepted nursing practice, that is that good and accepted nursing practice mandated that a nurse administering heparin (1) check the medication order for the correct patient, correct dose and correct route; (2) check to see if there are any contraindications for administering the medication; (3) check to see if PTT ( partial thromboplastin time) was within the recommended range for heparin therapy; and (4) verify patient's identity.

She further opined to a "reasonable degree of nursing certainty that the defendant Brookhaven Memorial Hospital Medical Center was careless, negligent, deviated from good and accepted nursing practice and was the competent cause of Anna Awe's (1) subsequent and recurrent massive gastrointestinal bleeding; (2) subsequent progressive deterioration, including but not limited to renal insufficiency, respiratory failure, ventilator dependency; surgical intervention, extended hospital confinement, and ICU care; and (3) death as an inpatient on June 3, 2003." Based upon the foregoing, the plaintiff has met his burden of establishing his entitlement to judgment as to the issue of liability.

In an action for medical malpractice, once a plaintiff has established his or her entitlement to summary judgment by prima facie evidence, the defendant must submit evidentiary facts or materials to rebut...[plaintiff's contentions]...so as to demonstrate the existence of a triable issue of fact (*Alvarez v. Prospect Hosp* 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 925 [1986] citing *Fileccia v. Massapequa Gen. Hosp.*, 63 N.Y.2d 639, 479 N.Y.S.2d 520, , affg. 99 A.D.2d 796, 472 N.Y.S.2d 127; *Neuman v. Greenstein*, 99 A.D.2d 1018, 473 N.Y.S.2d 806; *Buonagurio v. Drago*, 65 A.D.2d 830, 409 N.Y.S.2d 835, lv. denied 46 N.Y.2d 708, 414 N.Y.S.2d 1026).

In opposition thereto the defendant Hospital submits the affidavit of William Brugge, M.D. a

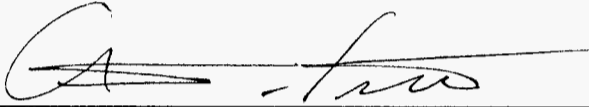
board certified internist and gastroenterologist. He had an opportunity to review the pleadings, the Brookhaven Memorial Hospital Medical Center chart, bill of particulars, deposition transcripts of Nielshkuman Patel, M.D., Diane DeStefano, R.N., Barbara Napoli, R.N. and Jonathan Zak, the medicare records, McGuire's hearing aid service records, Great South Bay Physicians Central Medical records and the Central Medical records of the decedent. Based upon such review he concluded that the "care and treatment rendered at Brookhaven is not the cause of Mrs. Axe's alleged gastrointestinal situation and her demise and the plaintiff's action against Brookhaven Memorial Medical Center should be dismissed in its entirety." Notwithstanding Dr. Brugge's conclusion, in his affidavit he states that " there may have been the misadministration of heparin on May 11, 2003....." and he fails to controvert the plaintiff's expert's statement that the use of heparin is contraindicated for an individual suffering from gastrointestinal bleeding in that it prolongs the patient's bleeding and their ability to clot. Accordingly, based upon the foregoing the defendant has failed to meet its burden of demonstrating triable issues of fact as to the issue of liability only and as such, the plaintiff's motion for summary judgment is granted.

This shall constitute the decision and order of the Court.

Submit judgment.

So ordered.

**Dated: Riverhead, New York  
May 17, 2007**

  
\_\_\_\_\_  
J.S.C.

\_\_\_ FINAL DISPOSITION     X  NON-FINAL DISPOSITION    \_\_\_ DO NOT SCAN