

DiPrima v Steinberg

2009 NY Slip Op 32381(U)

October 16, 2009

Supreme Court, Richmond County

Docket Number: 11203/04

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No. 11203/04
Motion No.: 2**

**JOSEPH DIPRIMA, as Administrator of the Estate of
FRANCES DIPRIMA, also known as FRAN DIPRIMA**

Plaintiff

DECISION & ORDER

against

HON. JOSEPH J. MALTESE

**SCOTT STEINBERG, M.D., FELICIA JACOB, M.D.,
TRACY PUZA, M.D., NEVILLE MOBARAKAI, M.D.,
ADEDAYO ADEDEJI, M.D., and STATEN ISLAND
UNIVERSITY HOSPITAL**

Defendants

The following items were considered in the review of the following motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decisions and Orders on this Motion are as follows:

A motion for summary judgment is made by the defendants, Scott Steinberg, M.D. (“Dr. Steinberg”), Felicia Jacob, M.D. (“Dr. Jacob”), Neville Mobarakai, M.D. (“Dr. Mobarakai”), Adedayo Adedeji, M.D. (“Dr. Adedeji”), and Staten Island University Hospital (“SIUH”) pursuant to New York Civil Practice Law and Rules (“CPLR”) § 3212.¹ The motion is denied in part as pertains to the defendants Dr. Steinberg, Dr. Mobarakai, Dr. Adedeji, and SIUH. The motion is granted to the extent of granting summary judgment in favor of Dr. Jacob, dismissing the action against Dr. Jacob; permitting an entry of judgment in favor of Dr. Jacob; and removing the name Felicia Jacob, M.D. from the caption.

Facts

This is an action based upon alleged acts of medical malpractice occurring between

¹CPLR § 3212 (a).

February 28, 2002 and May 4, 2002. Mrs. Frances DiPrima (“Mrs. DiPrima”) was 63 years old, and had experienced six weeks of diarrhea, flatulence, fever, and a weight loss of 25 pounds before entering SIUH. Two weeks prior to admission, Mrs. DiPrima developed persistent nausea, vomiting, abdominal swelling and pain. She entered the emergency room of SIUH on February 28, 2002, where she had a distended, tender abdomen without rebound tenderness, and was admitted to the hospital under the care of Dr. Steinberg.

On March 1, 2002, Mrs. DiPrima had an abdominal Computerized Axial Tomography examination (“CAT scan”). Mrs. DiPrima failed to improve with conservative therapy over the next days of observation and treatment. Dr. Steinberg performed an exploratory laparotomy on March 6, 2002, during which he excised a partial small bowel obstruction in the proximal jejunum and performed extensive lysis of adhesions. Dr. Steinberg also revised a previously performed Bilroth II procedure, also known as a gastrojejunostomy with Roux-en-Y reconstruction. Pathological examination reported chronic fibrosing serositis involving stomach and small intestinal tissue, and also reported “acute hemorrhagic to chronic fibrosing serositis” of the small bowel. Mrs. DiPrima was treated with the antibiotics ciprofloxacin and metronidazole as post-operative antibiotic prophylaxis following surgery.

On March 9, 2002, Mrs. DiPrima developed fever post-operatively. Fever frequently recurred during the remainder of her hospital stay. On March 10, 2002 Mrs. DiPrima’s chest x-ray showed left lower lung infiltrates and left pleural effusion. Upper gastrointestinal radiological examination (“UGI”) on March 11, 2002 showed partial obstruction at the anastomotic site without demonstrable leakage. Abdominal and pelvic CAT scan performed on March 14, 2002, revealed an enlarged pancreas with heterogeneous attenuation, suspected as being fibronous pancreatitis; hepatomegaly; a possible fluid collection in the right pelvis; either atelectasis or infiltrate in the left lower lobe of the lung and left pleural effusion; and retained contrast in the stomach, bowel and colon.

Infectious Diseases consultant Dr. Mobarakai saw Mrs. DiPrima on March 15, 2002 and

thereafter. When first seen, Mrs. DiPrima was noted to have a fever of 102 degrees Fahrenheit. There was leukocytosis; erythema and tenderness of the left arm around a percutaneous intravenous central catheter (“PICC line”); and a red and tender surgical incision. Dr. Mobarakai added vancomycin to the antibiotic regimen.

On March 18, 2002, UGI exam showed complete obstruction at the gastrojejunostomy site. By March 20, 2002, fever and leukocytosis persisted. Esophago-gastro-duodenoscopy (“EGD”) showed a widely patent anastomosis. The endoscopist washed a large amount of abnormal material from the stomach using an Ewald tube during the EGD.

Dr. Adedeji, an infectious diseases consultant, first saw Mrs. DiPrima on March 23, 2004 and noted mucoid drainage at both the abdominal wound and the PICC site. He prescribed intravenous fluconazole. On March 28, 2002, Mrs. DiPrima’s condition worsened, and she was transferred to the intensive care unit. Chest x-ray showed bilateral perihilar infiltrates and pleural effusions. On March 29, 2008, abdominal and pelvic CAT scan showed no change from previous examinations. Dr. Mobarakai and Dr. Adedeji continued to medically follow Mrs. DiPrima and intermittently altered her antibiotic therapy. Those antimicrobial therapeutics administered at differing times included acyclovir, aztreonam, ciprofloxacin, erythromycin, fluconazole, meropenem, metronidazole, and vancomycin.

On April 6, 2008 an urgent EGD showed leakage from the anastomosis. A rash of the lower trunk and extremities was noted on April 9, 2008. The medical chart suggests the rash was possibly related to a trial dose of the antibiotic meropenem. Bilateral thoracotomy drainage tubes were inserted on April 12, 2002. Mrs. DiPrima’s condition continued to deteriorate in the SIUH intensive care unit while being followed by Dr. Steinberg, Dr. Mobarakai, and Dr. Adedeji, among other physician consultants. Mrs. DiPrima became unresponsive over time and her body temperatures varied from febrile to hypothermic. On April 22, 2002, Mrs. DiPrima was started on acyclovir by Dr. Mobarakai because of oral ulcers previously noted by an Ear, Nose and Throat expert. Antibiotic resistant bacteria, a species of the gram-negative bacillus

Acinetobacter, were grown from a Swan-Ganz catheter tip on April 24, 2002.

Mrs. DiPrima's condition continued to deteriorate with multiple medical complications despite intensive care for Systemic Inflammatory Response Syndrome ("SIRS") and renal insufficiency. On May 1, 2002, a chest x-ray was performed and Mrs. DiPrima was diagnosed as having the Acute Respiratory Distress Syndrome ("ARDS"). On May 3, 2002, blood cultures grew Acinetobacter species and Mrs. DiPrima declined clinically. On May 4, 2002, Mrs. DiPrima died. The medical record lists cause of death as ventricular arrhythmia superimposed on other medical and surgical problems.

The defendants now move for summary judgment dismissing the plaintiff's complaint.

Discussion

Under CPLR § 3212, a motion for summary judgment requires that "the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."² Notwithstanding facts presented by any party, "the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact."³ When the Appellate Division, Second Department evaluates for summary judgment, all evidence must be examined in the light most favorable to the non-moving party,⁴ and the non-movant must be given the benefit of every favorable inference.⁵

In support of the motion for summary judgment the defendants annex an expert opinion

²CPLR § 3212 (b).

³*Id.*

⁴*Nicklas v. Tedlen Realty Corp.*, 305 AD 2d 385, 386 [2d Dept 2003].

⁵*Gray v. N. Y. City Transit Auth.*, 12 AD 3d 638, 639 [2d Dept 2004]; *Perez v. Exel Logistics, Inc.*, 278 AD 2d 213, 214 [2d Dept 2000]

from Walter F. Pizzi, M.D. (“Dr. Pizzi”) in support of Dr. Steinberg, and expert opinions from Peter C. Welch, M.D. (“Dr. Welch”) supporting the remaining defendants. The plaintiff submits an affirmation from a medical expert alleging malpractice by the defendants. The plaintiffs’ expert’s name has been redacted and other identifying information such as educational and professional history is absent.⁶ It is permissible to redact the name of the medical expert.⁷ The Appellate Division, Second Department has permitted submission of affirmations by expert witnesses from which identifying information, including qualifications, has been redacted, but the qualifications may need to be disclosed upon demand.⁸

I. Dr. Steinberg’s motion for summary judgment does not succeed.

Allegations in plaintiff’s bill of particulars against Dr. Steinberg, include an assertion that Mrs. DiPrima should not have had her initial surgery.⁹ Dr. Steinberg’s supporting expert, Dr. Pizzi, responded to the bill of particulars by himself asserting that “Dr. Steinberg properly reached the conclusion that surgery was the only option.”¹⁰ In response to claims in the bill of particulars that management of antibiotics and diagnostic efforts were inadequate, Dr. Pizzi laconically comments that Mrs. DiPrima “was worked up thoroughly due to a suspicion that she was suffering a leak from the anastomosis.”¹¹ Dr. Pizzi states that Dr. Steinberg spent 30

⁶Plaintiff’s Affirmation in Opposition to Defendants’ Motion for Summary Judgment, Exhibit A, Affirmation.

⁷CPLR § 3101 (d) (1) (i); *McCarty v. Community Hosp. of Glen Cove*, .203 AD 2d 432, 433 [[2d Dept 1994].

⁸*Thomas v. Alleyne*, 302 AD 2d 36, 46 [2d Dept 2002]; *Arellano v. N.Y. City Health and Hosps. Corp.*, 2004 NY Slip Op51388U *4 [2d Dept 2004].

⁹Defendant’s Notice of Motion, Exhibit C, ¶ 1.

¹⁰Defendant’s Notice of Motion, Exhibit K, ¶ 10.

¹¹*Id.*, ¶ 12.

minutes obtaining a medical history and was aware of past surgical history.¹² Dr. Pizzi also states that performing the initial surgery was a matter of medical judgment,¹³ and he further disputes the absence of notes indicating the need for surgery.¹⁴ Dr. Pizzi additionally disputes deviation from accepted standards of medical care in Dr. Steinberg's treatment of Mrs. DiPrima. Dr. Pizzi culminated by affirming that Dr. Steinberg "did not depart from good and accepted medical practice in his care and treatment",¹⁵ and that Dr. Steinberg's "care and treatment were not the proximate cause of the decedent's injuries..."¹⁶ Dr. Steinberg's expert's affirmation has made a *prima facie* demonstration shifting the burden of proof to the plaintiff on these specific matters.

The bill of particulars additionally alleges that Dr. Steinberg failed to undertake appropriate diagnostic laboratory and radiological testing for problems other than a suspected anastomotic leak; to monitor antibiotic treatment; to communicate adequately with other physicians; and to make adequate records.¹⁷ Each of these issues regarding Mrs. DiPrima's post-surgical care is not explicitly addressed by Dr. Pizzi. For these particulars, there has been no *prima facie* demonstration adequate to shift the burden of proof to the plaintiff.

In response to the burden imposed upon the plaintiff, the plaintiff's expert alleges that Dr. Steinberg should not have performed surgery on Mrs. DiPrima on March 6, 2002 because a reasonably prudent surgeon would have anticipated adhesions and complicated surgery.¹⁸ The

¹²*Id.*, ¶ 6.

¹³*Id.*, ¶ 7, 8 and 9.

¹⁴*Id.*, ¶ 9.

¹⁵Defendant's Notice of Motion, Exhibit K, Expert Affirmation of Dr. Pizzi, ¶ 5.

¹⁶*Id.*

¹⁷*Id.*, Exhibit C, Plaintiff's Notice of Motion, Exhibit C, Plaintiff's Verified Bill of Particulars as to Defendant Scott Steinberg, M.D., ¶ 1.

¹⁸Plaintiff's Affirmation in Opposition, Exhibit A, Physician's Affirmation, ¶ 4.

plaintiff's expert further alleges Dr. Steinberg was at fault for not reviewing prior SIUH records.¹⁹ It is further asserted that Dr. Steinberg should have treated Mrs. DiPrima with conservative medical care instead of surgery because a partial obstruction should not be treated surgically except in the presence of specific signs of perforation of the bowel.²⁰ Additionally, according to the plaintiff's expert, signs of improvement without surgery were present pre-operatively and surgery should not have been performed.²¹ Plaintiff's expert also states that Dr. Steinberg departed from good care by not documenting surgical indications for operating on March 6, 2002,²² and further departed from good care by not repeating a CAT scan.²³ The plaintiff's expert states that a CAT scan of March 12, 2002, showed an abdominal fluid collection, not commented upon by "any doctor", and the failure to drain this fluid was a departure from good and accepted practice.²⁴ The plaintiff's expert asserts the CAT scan of March 12, 2002, should have been done at an earlier date.²⁵ The plaintiff's expert additionally states that these alleged departures, faults and errors were the cause of Mrs. DiPrima's unfavorable hospital course and death.

In summary, the burden of proof had been shifted to the plaintiff for the particularized issues of performing surgery, and adequately evaluating a possible anastomotic leak. Plaintiff's expert witness correspondingly responded "that the defendant should not have performed an

¹⁹*Id.*, ¶ 6.

²⁰*Id.*, ¶ 7.

²¹*Id.*, ¶ 8.

²²*Id.*, ¶ 9.

²³*Id.*, ¶ 10.

²⁴*Id.*, ¶ 14.

²⁵*Id.*, ¶ 17.

exploratory laparotomy”²⁶ and “it was a departure not to drain this abscess...”²⁷ Therefore, these two allegations have become issues of credibility and of fact, and partial summary judgment is denied on these points. The conflicts created by opposing expert opinions include issues to be resolved by weighing the respective credibilities of the opposing expert testimonies. Such conflicts are for a jury to resolve.²⁸ “[T]he resolution of issues regarding the credibility of both expert and lay witnesses and the accuracy of their testimony are matters peculiarly within the province of the jury.”²⁹ Therefore, issues remain unresolved that require a finder of fact, and this case may not be settled on the law. Further, the remaining issues particularized within the plaintiff’s bill of particulars were not addressed by Dr. Pizzi’s expert affirmation. These issues remain to be tried by a finder of fact. Defendant Dr. Steinberg’s motion is denied in its entirety.

II. The motion for summary judgment by Dr. Mobarakai, Dr. Adedeji does not succeed.

The individual bills of particular against Dr. Mobarakai, Dr. Adedeji may be summarized as asserting that these defendants failed to appropriately determine whether the patient was a candidate for surgery; that they improperly evaluated the patient’s prior medical history; did not evaluate diagnostics appropriately; failed to obtain consultations; and failed to properly treat the patient medically.³⁰ In support of their motion for summary judgment, Dr. Mobarakai, Dr.

²⁶Plaintiff’s Affirmation in Opposition, Exhibit A, ¶ 8.

²⁷*Id.*, ¶ 14.

²⁸*Halkias v. Otolaryngology-Facial Plastic Surgery Assoc., P.C.*, 282 AD 2d 650, 651 [2d Dept 2001].

²⁹*Miller v. Long Island Lighting Co.*, 166 AD 564, 565 [2d Dept 1990].

³⁰Defendant’s Notice of Motion, Exhibit C, Plaintiff’s Verified Bill of Particulars as to Defendant ... [successively] Neville Mobarakai, M.D., Adedayo Adedeji, M.D., and Staten Island University Hospital.

Adedeji, submit an expert opinion from Dr. Welch.³¹

Dr. Welch asserts that Dr. Mobarakai and Dr. Adedeji, followed Mrs. DiPrima “very closely, monitoring the doses of her antibiotic treatment very carefully, ... [and] monitoring [Mrs. DiPrima’s] laboratory values very carefully.”³² Additionally, Dr. Welch asserts that rather than being at fault for not draining an abscess, there is no affirmative evidence in the medical records of an actual abscess.³³ Further, according to Dr. Welch, if an abscess needed to be drained, it was the responsibility of the surgeon to make that decision.³⁴ Dr. Welch concludes that Dr. Mobarakai and Dr. Adedeji did not cause Mrs. DiPrima’s “injuries, including her death.”³⁵ This court finds that the expert affirmation submitted by the defendants, Dr. Mobarakai and Dr. Adedeji satisfies the defendants’ burden to demonstrate a *prima facie* entitlement to judgment as a matter of law.

Having had the burden of proof shifted to the plaintiff, plaintiff’s expert opinion counters that Dr. Mobarakai and Dr. Adedeji failed to expeditiously perform a repeated CT scan, and to recommend drainage of the presumed abdominal abscess in addition to merely treating the “abscess” with antibiotic therapy.³⁶ The plaintiff’s expert specifically stated that Dr. Mobarakai and Dr. Adedeji were a cause of Mrs. DiPrima’s “post surgical course, pain and suffering and death.”³⁷

³¹Defendant’s Notice of Motion, Exhibit L, Affirmation of Dr. Welch.

³²*Id.*, ¶ 15.

³³*Id.*, ¶ 7.

³⁴*Id.*, ¶ 8.

³⁵*Id.*, 16.

³⁶*Id.*, ¶¶ 15 - 17.

³⁷*Id.*, ¶ 17.

In regard to the abdominal fluid collection said to be present on March 12, 2002, plaintiff's expert states that it was a departure from good care by Dr. Mobarakai and Dr. Adedeji not to note and drain the fluid, and this failure was a proximate cause of Mrs. DiPrima's pain, suffering and death.³⁸ Plaintiff's expert states this fluid was confirmed when a radiological study showed leakage from the anastomosis that again should have prompted Dr. Mobarakai and Dr. Adedeji to recommend drainage in addition to antibiotic therapy. This was also claimed to be a proximate cause of pain, suffering and death.³⁹ The foregoing issues have been established as issues of credibility involving opposing expert witnesses and are to be resolved as matters of credibility or fact. The issues therefore remain for the fact finder to determine.

These conflicting expert opinions require resolution by judging the credibility of the respective expert testimony. As previously noted, such conflicts are for a jury to resolve.⁴⁰ Once again, issues raised by plaintiff's bill of particulars were not addressed. Defendants', Dr. Mobarakai's and Dr. Adedeji's, motion for summary judgment is denied.

III. The motion for summary judgment by the defendant SIUH does not succeed.

The bill of particulars against SIUH may be summarized as asserting that SIUH failed, through its employees Dr. Mobarakai and Dr. Adedeji, to appropriately determine whether the patient was a candidate for surgery; failed to properly evaluate the patient's prior medical history; failed to evaluate diagnostics appropriately; failed to obtain consultations; and failed to properly

³⁸Plaintiff's Affirmation in Opposition to Defendants' Motion for Summary Judgment, Exhibit A, Affirmation of Expert Witness, ¶ 15.

³⁹*Id.*, ¶ 16.

⁴⁰*Halkias v. Otolaryngology-Facial Plastic Surgery Assoc., P.C.*, 282 AD 2d at 651; *see also Miller v. Long Island Lighting Co.*, 166 AD at 565.

treat the patient medically.⁴¹ In support of their motion for summary judgment, SIUH submits an expert opinion from Dr. Welch.⁴²

In answer to the plaintiff's bill of particulars, Dr. Welch states that SIUH "was not negligent in its care and treatment..."⁴³ Further, Dr. Welch offered the conclusion that the care rendered by SIUH was not the "proximate cause of any of the injuries the plaintiff alleges, including, but not limited to, the death of the decedent."⁴⁴ Bare conclusory assertions are not persuasive as an expert opinion.⁴⁵ Dr. Welch's affirmation in support of SIUH as the moving party is essentially conclusory and therefore does not succeed in establishing a *prima facie* case shifting the burden to the plaintiff.

In opposition to SIUH's motion for summary judgment, the plaintiff's expert alleges that SIUH staff failed to obtain an adequate history and that this failure led to faulty decision making by Dr. Steinberg and this was a proximate cause of Mrs. DiPrima's "post-surgical course, pain and suffering and death."⁴⁶ Additionally, according to the plaintiff's expert opinion, SIUH failed to make records of prior surgery available to Dr. Steinberg and this failure was a proximate cause of Mrs. DiPrima's unfortunate outcome.⁴⁷ Thus, allegations in the bill of particulars have not

⁴¹Defendant's Notice of Motion, Exhibit C, Plaintiff's Verified Bill of Particulars as to Defendant ... [successively] Neville Mobarakai, M.D., Adedayo Adedeji, M.D., and Staten Island University Hospital.

⁴²Defendant's Notice of Motion, Exhibit L, Affirmation of Dr. Welch.

⁴³Defendant's Notice of Motion, Exhibit L, Affirmation of Dr. Welch, ¶ 20.

⁴⁴*Id.*, ¶ 21.

⁴⁵*Gonzalez v. 98 Mag Leasing Corp.*, 95 NY 2d 124, 129 [2000].

⁴⁶Plaintiff's Affirmation in Opposition to Defendants' Motion for Summary Judgment, Exhibit A, Affirmation of Expert Witness, ¶ 5.

⁴⁷*Id.*, ¶ 6.

been properly answered by the defendant SIUH's expert Dr. Welch.

SIUH fails to make a *prima facie* case shifting the burden of proof to the plaintiff because of the conclusory nature of the affirmation by Dr. Welch. Additionally, there are unanswered particulars that remain following SIUH's expert's affirmation. Defendant SIUH's motion for summary judgment is denied.

IV. Summary judgment in favor of Dr. Jacob is granted.

Plaintiff's expert does not address any opinion pertaining to Dr. Jacob in the expert affirmation. In deposition provided on October 17, 2007, Dr. Jacob asserts she had no part in the medical care of Mrs. DiPrima between February 28, 2002 and May 4, 2002. Dr. Jacob's name appears on the Medical Certificate of Death as having attended Mrs. DiPrima for those dates.⁴⁸ However, neither box indicating either direct attendance on the patient; or attendance to the patient by staff physicians is filled in. The form states Dr. Jacob last saw the patient in the emergency room,⁴⁹ for which no confirmation is found in the emergency room records.⁵⁰ Dr. Jacob denies referring Mrs. DiPrima to the hospital, knowing Mrs. DiPrima was hospitalized, never saw her in the hospital, did not authorize the use of her name on the Certificate and did not sign the Certificate of Death.⁵¹ The defendants' expert opinion points out that Dr. Jacob was not

⁴⁸Defendants' Notice of Motion, Exhibit M, Certificate of Death.

⁴⁹*Id.*

⁵⁰*Id.*, Exhibit J.

⁵¹*Id.*, Exhibit H, Examination Before Trial of Dr. Jacobs, page 36, line 16 to page 38, line 11; and page 39, line 23 to page 40, line 5; and Exhibit M, Certificate of Death.

involved in Mrs. DiPrima's hospital care.⁵² The plaintiff does not oppose the motion for summary judgment on behalf of the defendant, Dr. Jacob.⁵³ Therefore motion for summary judgment in favor of Dr. Jacob is granted with dismissal of action, entry of judgment in favor of Dr. Jacob, and removal of the name of Felicia Jacob, M.D. from the caption.

Conclusion

In order to succeed in a motion for summary judgment under CPLR § 3212, all issues of fact, including the relative weight given to the credibility of opposing expert opinions, must be resolved. There are obvious differences in the expert opinions between those of the plaintiff's expert and the defendants' experts, Dr. Welch and Dr. Pizzi who collectively affirmed on behalf of Dr. Steinberg, Dr. Mobarakai, Dr. Adedeji, and SIUH. These are disputes to be resolved by a trier of facts. Additionally, the plaintiff's bills of particulars raise issues not addressed and overcome by defendants' experts. Giving the usual favorable inference to the non-movant party, summary judgment on behalf of Scott Steinberg, M.D., Neville Mobarakai, M.D., Adedayo Adedeji, M.D., and Staten Island University Hospital cannot be granted. Motion for summary judgment on behalf of Dr. Jacob is unopposed. Search of the record by the Court reveals ample basis for granting relief to Dr. Jacob.

Accordingly, it is hereby

ORDERED that motion by the defendants Scott Steinberg, M.D., Neville Mobarakai,

⁵²Defendants' Motion for Summary Judgment, Exhibit L, Dr. Welch's Affirmation, ¶¶ 10 and 11.

⁵³Plaintiff's Affirmation in Opposition to Defendants' Motion for Summary Judgment, ¶ 2.

M.D., Adedayo Adedeji, M.D., and Staten Island University Hospital is denied to the extent that summary judgment in their favor is not granted; and it is further;

ORDERED that motion by the defendant Felicia Jacob, M.D. is granted to the extent that summary judgment in favor of Felicia Jacob, M.D. is granted; and it is further;

ORDERED that motion by the defendant Felicia Jacob, M.D. is granted to the extent that the action against Felicia Jacob, M.D. is dismissed; and it is further;

ORDERED that motion by the defendant Felicia Jacob, M.D. is granted to the extent that an entry of judgment in favor of Felicia Jacob, M.D. is granted; and it is further;

ORDERED that the name of Felicia Jacob, M.D. is to be removed from the caption; and it is further;

ORDERED, that the new caption shall read

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

DCM PART 3

Index No. 11203/04

**JOSEPH DIPRIMA, as Administrator of the Estate of
FRANCES DIPRIMA, also known as FRAN DIPRIMA**

Plaintiff

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**SCOTT STEINBERG, M.D., FELICIA JACOB, M.D.,
TRACY PUZA, M.D., NEVILLE MOBARAKAI, M.D.,
ADEDAYO ADEDEJI, M.D., and STATEN ISLAND
UNIVERSITY HOSPITAL**

Defendants

and it is further;

ORDERED, that all parties shall return for Pre-Trial Conference on **Monday, November 2, 2009**, at **9:30 AM**.

ENTER,

DATED: October 16, 2009

Joseph J. Maltese
Justice of the Supreme Court