

**McNamara v Marino**

2010 NY Slip Op 33185(U)

November 8, 2010

Supreme Court, Suffolk County

Docket Number: 22340-06

Judge: Elizabeth H. Emerson

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SHORT FORM ORDER

INDEX  
NO.: 22340-06**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 8 SUFFOLK COUNTY**

COPY

PRESENT: Honorable Elizabeth H. Emerson

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X  
ELIZABETH McNAMARA and JOSEPH  
McNAMARA,

Plaintiffs,

-against-

JOSEPH MARINO, DAVID WEISSBERG and  
HUNTINGTON HOSPITAL,Defendant.  

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XMOTION DATE: 4-28-10; 7-28-10; 7-29-10  
SUBMITTED: 10-7-10  
MOTION NO.: 001-MD  
002-MD  
003-MGJOHN L. JULIANO, P.C.  
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Upon the following papers numbered 1 89 read on this motion for summary judgment ; Notice of Motion and supporting papers (001) 1-12 ; Notice of Cross Motion and supporting papers (002) 13-62; (003) 63-74 ; Answering Affidavits and supporting papers 75-79 ; Replying Affidavits and supporting papers 80-84; 85-86; 87-89 ; it is,

**ORDERED** that this motion (001) by the defendant, David Weissberg for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiffs' complaint is denied; and it is further

**ORDERED** that this cross motion (002) by the defendant Joseph Marino for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiffs' complaint is denied; and it is further

**ORDERED** that this cross motion (003) by the defendant Huntington Hospital for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiffs' complaint is granted, and the complaint is dismissed with prejudice insofar as it is asserted against Huntington Hospital.

The complaint of this action sets forth causes of action sounding in medical malpractice, lack of informed consent asserted on behalf of the plaintiff, Elizabeth McNamara, and a derivative claim asserted on behalf of her spouse, Joseph McNamara. It is claimed that the defendants negligently departed from good and accepted standards of medical/surgical/anesthesia care and treatment when the plaintiff was admitted to Huntington Hospital on September 27, 2004 for a scheduled right total hip replacement due to osteoarthritis and avascular necrosis of the right hip, and failed to inform her of the risks and complications associated with the surgery, anesthesia, and treatment with Coumadin. It is claimed that due to the negligence of the defendants, the plaintiff was caused to suffer extensive bleeding in the area of the lumbar plexus and to sustain serious injury and nerve damage resulting in right lower extremity weakness, foot drop, paresthesia in the L3-L4, L4-5 distribution due to the failure of the defendants to properly and timely treat her condition. It is further claimed that the defendants failed to properly provide information concerning the risks, benefits and complications to her to enable her to give an informed consent. Dr. David Weissberg was the orthopedic surgeon who performed the hip replacement. Dr. Joseph Marino was the anesthesiologist who administered the spinal anesthesia for the surgery, and postoperative placed a lumbar plexus block also known as a psoas block and peripheral nerve block.

The moving defendants seek an order granting summary judgment dismissing the complaint asserted against them on the basis they did not deviate from good and accepted standards of care during the care and treatment and admission of the plaintiff which proximately caused the claimed injuries suffered by the plaintiff.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (**Sillman v Twentieth Century-Fox Film Corporation**, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (**Winegrad v N.Y.U. Medical Center**, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (**Winegrad v N.Y.U. Medical Center**, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and

must “show facts sufficient to require a trial of any issue of fact” (CPLR 3212[b]; **Zuckerman v City of New York**, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (**Joseph P. Day Realty Corp. v Aeroxon Prods.**, 148 AD2d 499, 538 NYS2d 843 [2<sup>nd</sup> Dept 1979]) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (**Castro v Liberty Bus Co.**, 79 AD2d 1014, 435 NYS2d 340 [2<sup>nd</sup> Dept 1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (**Friends of Animals v Associated Fur Mfrs.**, 46 NY2d 1065, 416 NYS2d 790 [1979]).

In support of motion (001), the defendant, David Weissberg, M.D. has submitted, inter alia, an attorney’s affirmation; the affidavit of David Weissberg, M.D., copies of the summons and complaint, answer, amended answer; plaintiffs’ verified bill of particulars; and copies of the transcripts of the examinations before trial of David Weissberg, M.D. dated April 24, 2009, and Joseph Marino dated March 19, 2008; copies of plaintiff’s medical records. It is noted that the deposition transcripts of David Weissberg, M.D. and Joseph Marino, M.D. are not in admissible form as required by CPLR 3212 and are not accompanied by an affidavit pursuant CPLR 3116, and therefore, are not considered.

In support of cross motion (002), the defendant, Joseph Marino, M.D., has submitted, inter alia, an attorney’s affirmation; copies of the summons and complaint, amended complaint, amended answers; plaintiffs’ verified bills of particulars; copies of the transcripts of the examinations before trial of Elizabeth McNamara dated March 5, 2007 and August 20, 2007, Joseph Marino dated March 19, 2008, David Weissberg, M.D. dated April 24, 2009, Marie D’Amato on behalf of Huntington Hospital dated June 19, 2009; various sections of plaintiff’s medical records and diagnostic studies; neurological consultation of Shafi Wani dated March 28, 2006, and the unsigned report/letter of Vandana Soni, M.D.; and the expert affirmation of Daniel H. Sajewski, M.D. It is noted that the deposition transcripts of Elizabeth McNamara, David Weissberg, M.D., Joseph Marino, M.D. and Marie D’Amato, are not in admissible form as required by CPLR 3212 and are not accompanied by an affidavit pursuant CPLR 3116, and the neurological consultation of Shafi Wani dated March 28, 2006, and the unsigned report/letter of Vandana Soni, M.D. are not in admissible form as required by CPLR 3212, and therefore, are not considered.

In support of cross motion (003), the defendant, Huntington Hospital, has submitted, inter alia, an attorney’s affirmation; copies of the pleadings and plaintiff’s verified bill of particulars; certified copy of the plaintiff’s Huntington Hospital record; expert affirmation of Joseph S. Jeret, M.D.; and copies of the transcripts of the examinations before trial of David Weissberg, M.D. dated April 24, 2009, and Joseph Marino dated March 19, 2008. It is noted that the deposition transcripts of David Weissberg, M.D. and Joseph Marino, M.D. are not in admissible form as required by CPLR 3212 and are not accompanied by an affidavit pursuant

CPLR 3116, and therefore, are not considered.

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (**Holton v Sprain Brook Manor Nursing Home**, 253 AD2d 852, 678 NYS2d 503 [2<sup>nd</sup> Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see*, **Derdiarian v Felix Contracting Corp.**, 51 NY2d 308, 434 NYS2d 166 [1980]; **Prete v Rafla-Demetrious**, 224 AD2d 674, 638 NYS2d 700 [2<sup>nd</sup> Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*see*, **Fiore v Galang**, 64 NY2d 999, 489 NYS2d 47 [1985]; **Lyons v McCauley**, 252 AD2d 516, 517, 675 NYS2d 375 [2<sup>nd</sup> Dept 1998], *app denied* 92 NY2d 814, 681 NYS2d 475; **Bloom v City of New York**, 202 AD2d 465, 465, 609 NYS2d 45 [2<sup>nd</sup> Dept 1994]).

David Weissberg, M.D. has set forth in his supporting affidavit that he is licensed to practice medicine in the State of New York and is a Board Certified Orthopedic surgeon. He opines with a reasonable degree of medical certainty that his care and treatment of Elizabeth McNamara was well within the standard of care. He states he took a proper history during a telephone call with her on August 10, 2004, ascertained that she had hypertension for which she was taking medication, she had a previous knee surgery, she had no allergies, and he advised her that she would have to obtain medical clearance with her internist and have preoperative testing at Huntington Hospital. He dictated a history and physical note on August 12, 2004 and indicated she was taking Verapamil and Hyzaar for her blood pressure. He states all of this demonstrates that he took a proper pre-surgical medical history. Dr. Weissberg further avers that he is not an anesthesiologist, and did not direct Dr. Marino to place the psoas block, he did not have a role in the placement of the needle either for spinal anesthesia or the catheter for the psoas block. He states that it is the standard of care to place all patients undergoing a total hip replacement on anticoagulation therapy postoperatively to prevent the possibility of deep vein thrombosis, and Dr. Marino was aware of that. He further states it is the standard of care to place a psoas block for postoperative pain management in a patient receiving postoperative anticoagulation therapy. He discussed the risks of surgery with the plaintiff as is his custom and practice, and advised of the risks of deep venous thrombosis, pulmonary embolism, death, infection, dislocation, fracture, heterotopic bone formation, leg length inequalities, alignment issues, neurovascular injury, pain and stiffness. Dr. Weissberg states he saw the plaintiff every day in the hospital and her first complaint that she was unable to move her right lower extremity was on September 29, 2004 at 3:00 p.m. of which he was advised and for which he saw her two hours later. He states his treatment was appropriate as he reviewed x-rays of the hip and a CT scan of the abdomen and pelvis, ordered pain medication and physical therapy. As an orthopedist, he states, he does not treat neurological problems such as foot drop, and the next day, called in a neurologist to evaluate her, including an MRI of the lumbosacral plexus and

electromagnetic nerve conduction studies. Dr. Weissberg states he timely addressed the neurological complaint and did not fail to institute emergency measures, did not take improper corrective measures; and called in a specialist.

Based upon the foregoing, it is determined that Dr. Weissberg has not demonstrated prima facie entitlement to summary judgment dismissing the complaint. He does not state that he advised Ms. McNamara of the possibility of bleeding from the Coumadin therapy and thus that she received proper informed consent concerning the use of anticoagulant therapy. He opines that he timely and properly addressed the neurological complaint and did not fail to institute emergency measures, but does not state what the proper standard of care is for the neurological problem which the plaintiff was experiencing and the time frame for such treatment, nor what his emergency measures were. Nor has he submitted the affirmation from an expert neurologist in support of his claim that his treatment of the plaintiff's neurological condition was timely and appropriate and the proper emergency measures to be taken. Further, Dr. Weissberg does not set forth the standard of care for a patient taking anticoagulation therapy and whether this standard was followed and the results of such treatment and testing. Dr. Weissberg does not state the proximate cause of the patient's neurological injury and does not rule out that such injury was not caused by the surgery he performed, or that it was caused by any acts or omissions on behalf of Dr. Marino.

Turning to cross motion (002), Joseph Marino has submitted the affirmation of Daniel H. Sajewski, M.D., his expert anesthesiologist. Dr. Sajewski sets forth that he is a physician licensed to practice medicine in the State of New York and is board certified in Anesthesiology. Based upon his review of the relevant pleadings and bill of particulars, it is his opinion that he has become fully conversant with the allegations and opines with a reasonable degree of medical certainty that the care and treatment rendered by Joseph Marino, M.D. at all times comported with good and accepted medical practice without any deviation or departures therefrom, and that none of the care provided by Dr. Marino contributed in any manner to the plaintiff's alleged injuries.

Dr. Sajewski states that according to the medical records, the plaintiff was not on any type of blood thinning medication, including Coumadin, at the time of the pre-anesthesia evaluation on September 20, 2004. For the right total hip replacement surgery on September 27, 2004, Dr. Marino used a 17 gauge needle for the psoas block at the L2-L3 level, with a bolus of .2% Ropivacaine at the rate of 15 m. per hours; no blood was noted upon aspiration of the needle, and no paresthesia was noted. A nerve stimulator was placed to identify the nerve where the block would be placed via catheter which was placed and taped in place. A fluoroscopic examination was conducted to identify the catheter placement. The portable x-ray film of the right hip and abdomen taken postoperatively revealed a surgical drain and staples in the right hip and contrast along the right psoas muscle consistent with the plaintiff being status post right psoas block. When Dr. Marino performed the needle placement for the psoas block, the plaintiff was not on any type of blood thinner, including Coumadin.

When the plaintiff was seen by the physical therapist at 10:00 a.m. on September 28, 2004, decreased strength in movement of the hip flexors and ankle dorsiflexion was noted and she began to complain of pain. The psoas block was still in place and the Ropivacaine was increased to 18 ml per hour. Positive pedal pulses and sensation were noted. Dr. Sajewski states that according to the Orthopedic Physician's Orders for Elective Total Hip Replacement, the plaintiff was to be given her first does of anticoagulants on September 28, 2004 as prescribed by Dr. Weissberg. The medication administration sheet indicates the first dose of Coumadin was given at 12:00 a.m. on September 27, 2004 but that nurse D'Amato testified that the date was a mistake and should have been recorded for September 28, 2004 as she did not receive the patient until September 27, 2004 at 8:00 p.m.

On September 29, 2004, the plaintiff was noted to have decreased sensation in the right lower extremity and burning in the right heel. At 3:00 p.m., the PCA (patient controlled anesthesia) was discontinued and a pain level of 8/10 was reported. A CT scan revealed a small amount of air within and adjacent to the lateral posterior margin of the psoas muscle and a small amount of blood tracking ventral to the right psoas muscle; bilateral pleural thickening or very small effusions and slight atelectactic changes posteriorly and inferiorly. The impression was gallstone, air adjacent to the right psoas muscle and a small amount of blood adjacent to the psoas muscle. The CT scan of the pelvis, also on that date, revealed a small amount of blood tracking ventral to the right psoas muscle to its insertion into the femoral head with a small amount of air in the muscle, consistent with the recent procedure. At 7:00 p.m., Dr. Marino removed the catheter intact, the block was discontinued, and he noted the sciatic involvement was resolving.

Dr. Sajewski states that on September 30, 2004, Dr. Shareeff performed a neurological evaluation and right thigh and calf numbness and right foot drop and leg weakness had been present for one to two days, and the diagnosis was neuropraxia vs lower spine plexopathy, etiology unknown. Dr. Sajewski sets forth the plaintiff's condition until she was discharged to Southside Hospital on October 4, 2004 for rehabilitation where neurology opined she probably had compression neuropathy from surgery. Dr. Zheng's electrodiagnosis after an EMG study was denervation of the right sciatic nerve with more involvement in the right peroneal nerve component, and there was no evidence to suggest lumbosacral radiculopathy. Dr. Sajewski also sets forth the additional testing and consults obtained.

It is Dr. Sajewski's opinion with a reasonable degree of medical certainty that Dr. Marino performed an accurate and complete pre-anesthesia evaluation; that a psoas block in this patient was an appropriate type of pain management; Dr. Marino's technique, method and location in placing the psoas block was appropriate and within good and accepted medical practice and he properly used a nerve stimulator to locate the lumbar plexus and confirmed the proper location for the psoas block with fluoroscopy; Dr. Marino, postoperatively, properly placed a percutaneous catheter to lie along the anterolateral margin of the psoas muscle; Dr. Marino properly deferred to the co-defendant Dr. Weissberg's judgment in prescribing

medications, specifically Coumadin, to the plaintiff, which Coumadin was properly administered September 28, 2004 at 12:00 a.m.; that it is not a departure from the proper standards of care to place a patient on Coumadin while a lumbar plexus catheter is in place; the small amount of blood and air found on the CT scan in the region of the lumbar plexus was consistent with and would be expected following the placement of a regional psoas block; the "minor hematoma represents the tracking of blood from placement of the psoas block and would be expected following the placement of a regional psoas block and would not substantiate sacral plexus injury and cannot explain the right foot drop and did not cause the right foot block; at the level of the lumbar plexus block, one cannot injure enough of the nerve roots that ultimately coalesce to form the sciatic nerve to then cause the injury of foot drop and the injuries are not consistent with an injury that would have occurred at the L2-L3 root level; and that there was no act or omission on the part of Dr. Marino that was the proximate cause of any injury to the plaintiff.

Based upon the foregoing, it is determined that Dr. Marino has not demonstrated prima facie entitlement to summary judgment dismissing the complaint against him on the issue of liability and proximate cause as he has not addressed the issue of lack of informed consent and has not opined whether or not informed consent was provided to the plaintiff concerning her anesthesia choices, risks, benefits and complications.

Turning to motion (003), Huntington Hospital has submitted the affirmation of Joseph Jeret, M.D., a physician duly licensed to practice medicine in the State of New York, board certified in neurology. It is his opinion with a reasonable degree of medical certainty that the care and treatment rendered at Huntington Hospital by its employees did not depart from good and accepted standards of medical care and treatment and there is no action, treatment, diagnosis, finding, study, recommendation, or care provided, or omission, which was the cause of, or a significant contributing factor to, any injury alleged to have been sustained by the plaintiff.

Upon admission to Huntington Hospital, the plaintiff's extremities were within normal limits except for range of motion in the right hip and pain beyond the extremes of motion, and the finding that her right leg was a half inch longer than the left leg. Dr. Weissberg performed a right total hip replacement on September 27, 2004. Joseph Marino, M.D. was the anesthesiologist who inserted a catheter into the plaintiff's psoas muscle in the lumbosacral region for post-operative pain management (psoas block), with a large hemovac drain in place which was observed to have a moderate amount of bloody drainage upon return to her room after surgery. Patient controlled anesthesia was encouraged for right lower extremity pain. Dr. Freit was notified of the same and the plaintiff was thereafter noted to be sleeping comfortably in bed. He sets forth the events which ensued and the care and treatment rendered and the findings of positive pedal pulses and sensation, then of inability to move the right lower extremity and right foot drop, with the follow up care and treatment and diagnostic testing. Although a CT scan performed on October 1, 2004 revealed a disc herniation at L3-4 and a mild disc bulge at L5-S1, this was determined not to be a factor in the plaintiff's right foot drop. Neurology follow up

concluded with an impression of neuropraxia versus lumbosacral plexopathy.

It is Dr. Jeret's opinion with a reasonable degree of medical certainty that the staff at Huntington Hospital carried out all physician orders in a timely and appropriate manner; none of the orders made by the plaintiff's physicians were contraindicated by normal practice; the plaintiff was appropriately monitored and observed; the chart is thorough and well-documented; the plaintiff's symptoms and complaints were timely and appropriately heeded and were relayed to her physicians in a timely manner and responded to timely and appropriately by Huntington Hospital; a neurologist was appropriately called and appropriate diagnostic studies were performed; and that none of the alleged acts or omissions of Huntington Hospital proximately caused or contributed to the plaintiff's injuries.

Based upon the foregoing, it is determined that Huntington Hospital has demonstrated prima facie entitlement to summary judgment dismissing the complaint as asserted against it based upon Dr. Jeret's opinion, as set forth above.

To rebut a prima facie showing of entitlement to an order granting summary judgment by defendants, plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert's affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendants' acts or omissions were a competent-producing cause of the injuries of the plaintiff (*see, Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.*, 7 AD3d 759, 776 NYS2d 907 [2004]; *Domaradzki v Glen Cove OB/GYN Assocs.*, 242 AD2d 282, 660 NYS2d 739 [1997]). In opposition to these motions, the plaintiffs have submitted the affirmations of Dr. Alexander E. Weingarten and Elizabeth McNamara.

There has been no affidavit submitted by the plaintiffs to rebut Dr. Jeret's opinion demonstrating prima facie entitlement to summary judgment dismissing the complaint as asserted against Huntington Hospital on the basis that Huntington Hospital and its employees did not depart from accepted standards of care and that none of the alleged acts or omissions proximately caused or contributed to the plaintiff's injuries.

Accordingly, motion (003) by Huntington Hospital for summary judgment dismissing the complaint is granted and the complaint is dismissed with prejudice as asserted against Huntington Hospital.

Alexander E. Weingarten, M.D. states he is a physician duly licensed to practice medicine in the State of New York and is a diplomate of the American Board of Anesthesiology and board certified by the American Academy of Pain. It is Dr. Weingarten's opinion to a reasonable degree of medical certainty that during the hip replacement procedure, there were complications as a result of the negligence of the defendants which caused a bleed around the lumbar plexus which caused the plaintiff to sustain a nerve root injury causing a foot drop, and there were numerous deviations from good and accepted medical practice and standards which

caused the devastating injuries to the plaintiff. He states that at the time of surgery, the defendants inserted a catheter while the plaintiff was on Coumadin, a blood thinner, and that it was the responsibility of both the defendant orthopedist and anesthesiologist to take a thorough history and to make sure the Coumadin was stopped prior to surgery and that the plaintiff was started on Heparin to reverse the anti-coagulant effect of Coumadin. Dr. Weingarten states it was the combination of the insertion of the catheter while on blood thinners which caused a bleed around the lumbar plexus, also causing a compression injury at the peroneal nerve level which in turn caused the plaintiff to sustain a foot drop. The alternative to the utilization of a catheter was to commence an intravenous to prevent any bleeds which could cause further damage.

Dr. Weingarten also opines to a reasonable degree of medical certainty that the defendants failed to properly position the plaintiff on the operating table as she was placed in a left lateral decubitus position which failed to adequately secure and position the plaintiff's left leg so it did not move into an abnormal position, and in failing to cushion the leg during the hip replacement procedure, allowing the blood to pool around the lumbar plexus during and after surgery, proximately causing the plaintiff's foot drop. He further states that it was the responsibility of both the defendant orthopedic surgeon and the anesthesiologist to properly position the plaintiff during the surgery, and that Dr. Weissberg, as surgeon, is the principal leader of the surgical team, thus deviated from the standard of care proximately causing the plaintiff's injuries.

Based upon the foregoing, it is determined that Dr. Weingarten has raised factual issues concerning whether the plaintiff was on Coumadin prior to surgery creating factual issues with regard to both Dr. Weissberg's and Dr. Marino's care and treatment, and whether she was taking Coumadin and when it was started. Dr. Weingarten further opines that Dr. Weissberg, as leader of the surgical team, deviated from the standard of care concerning positioning of the plaintiff, proximately causing the plaintiff's injuries. Although a further affirmation by Dr. Sajewski has been submitted in the Reply papers in an attempt to counter some of Dr. Weingarten's opinions, summary judgment may not be awarded where the parties adduce conflicting opinions of medical experts; when experts offer conflicting opinions, a credibility question is presented requiring a jury's resolution (**Shields et al v Baktidy et al**, 11AD3d 671, 783 NYS2d 652 [2<sup>nd</sup> Dept 2004]). Additionally, an affirmation received in a Reply deprives the plaintiffs from responding to such affirmation, and all arguments in support of the defendant's motion should have been made in the moving papers to establish prima facie entitlement to summary judgment (**Feeney et al v Schroeter, D.O. et al**, 2008 Slip Op 30064U, 2008 NY Misc Lexis 7623 [Supreme Court of New York, Suffolk County]; **Santiago v Batista**, 25 AD3d 326, 807 NYS2d 340 [2<sup>nd</sup> Dept 2006]; **Bjorke v Rubenstein**, 38 AD3d 580, 833 NYS2d 115 [2<sup>nd</sup> Dept 2002]). There are further factual issues concerning whether the level of the placement of the catheter could in fact proximately cause the injuries claimed.

Accordingly, motion (001) by Dr. Weissberg, and cross motion (002) by Dr. Marino for an order granting summary judgment dismissing the complaint as asserted against them are denied.

**HON. ELIZABETH HAZLITT EMERSON**

Dated: November 8, 2010

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J.S.C.