

**Martinez v Sandhu**

2012 NY Slip Op 30060(U)

January 11, 2012

Supreme Court, New York County

Docket Number: 102864/10

Judge: Joan B. Lobis

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Lobis  
Justice

PART 6

Re: RAMONA VELAZQUEZ  
ET AL.

INDEX NO. 102864/16

MOTION DATE 10/11/11

MOTION SEQ. NO. 1

MOTION CAL. NO. \_\_\_\_\_

GAGANDEET SANOHU  
ET AL.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-10

11-15

16

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *decided in accordance with accompanying decision and order.*

**FILED**

JAN 12 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/11/12

*[Signature]*  
**JOAN B. LOBIS** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
EVELYN MARTINEZ, as Administrator of the Goods,  
Chattels and Credits which were of RAMONA  
VELAZQUEZ, deceased,

Plaintiff,

Index No. 102864/10

-against-

**Decision and Order**

GAGANGEET SANDHU, M.D., ANGELA M.  
PALAZZO, M.D. and ST. LUKE'S-ROOSEVELT  
HOSPITAL CENTER,

Defendants.

-----X  
JOAN B. LOBIS, J.S.C.:

Defendants Gagangeet Sandhu, M.D., Angela M. Palazzo, M.D., and St. Luke's-

Roosevelt Hospital Center (the "Hospital") move, by order to show cause, for an order granting them summary judgment, pursuant to C.P.L.R. Rule 3212, on the grounds that plaintiff cannot establish a prima facie case of negligence against them. Plaintiff Evelyn Martinez, as administrator of the estate of Ramona Velazquez, opposes summary judgment on the grounds that triable issues of fact exist.

This action, sounding in medical malpractice, wrongful death, and lack of informed consent, arises out defendants' treatment of Ms. Velazquez between March 24, 2008, and March 30, 2008. Ms. Velazquez, 85 years old at the time, previously had been diagnosed with asthma, hypertension, chronic obstructive pulmonary disease ("COPD"), coronary artery disease, type II diabetes, and hypothyroidism. She was also legally blind. She had a myocardial infarction and underwent a triple coronary artery bypass graft surgery in 1994, and a stroke in 1997.

**FILED**

JAN 12 2012

NEW YORK  
COUNTY CLERK'S OFFICE

On March 17, 2008, a mass in Ms. Velazquez's lungs was visualized on an x-ray. On March 24, 2008, she presented to the Hospital's clinic for a follow-up related to the mass. Ms. Velazquez was referred to the Hospital's emergency room for increased shortness of breath, exacerbation of asthma, cough, hypotension, and possible sepsis. At the time she presented to the emergency room, she was regularly taking aspirin, Lipitor, Synthroid, Norvasc, enalapril, hydrochlorothiazide, Advair, and calcium. At the emergency room, tests showed an elevated prothrombin time ("PT") and international normalized ratio ("INR") levels (these tests determine how fast blood clots); elevated troponin and creatine phosphokinase ("CPK") enzyme levels (high levels of troponin and CPK may indicate heart injury); and a normal partial thromboplastin time ("PTT") (the number of seconds it takes for blood to clot). A chest x-ray and an electrocardiography ("EKG") were performed. A differential diagnosis of non-ST elevation myocardial infarction ("NSTEMI") was made, and Ms. Velazquez was referred for admission. A cardiology consultation performed on March 24, 2008, noted that the diagnosis was most likely demand ischemia from exacerbation of asthma. Unfractionated intravenous heparin was commenced.

On March 25, 2008, at approximately 4:19 a.m., it was noted that Ms. Velazquez's PTT levels had dramatically increased, from 30.5 seconds (as noted on March 24) to 180.3 seconds. Heparin was discontinued at approximately 4:30 a.m. and restarted at approximately 5:30 a.m. at a lower dose. Later that morning, her PTT levels were still high at over 190 seconds. Heparin was discontinued; the administration of aspirin and Plavix was commenced; and simvastatin was commenced in place of Lipitor. Ms. Velazquez's working diagnosis at this point was demand ischemia. Administration of a subcutaneous low molecular heparin was commenced at approximately 10:00 p.m., for deep vein thrombosis prophylaxis.

On March 26, 2008, Ms. Velazquez's physicians diagnosed her with atrial fibrillation (irregular heart rhythm) and at around 4:00 p.m. started her on Lovenox (a subcutaneous low molecular weight heparin). She experienced an increased shortness of breath, and an x-ray indicated a possible right lobe infiltrate and probable pulmonary hypertension. On March 27, 2008, Ms. Velazquez was continued on aspirin, Plavix, diazepam and Lovenox, and started on warfarin (Coumadin) (an anticoagulant in pill form) in an effort to wean her off Lovenox. She was noted as comfortable, with a slightly elevated PTT and PT and normal INR, and arrhythmia.

On March 28, 2008, Ms. Velazquez's condition deteriorated quickly. She had tenderness and bruising in her abdominal region, an altered mental status, and an increased white blood cell count. A guaiac test was positive and indicated internal bleeding. All anticoagulants and antiplatelets were discontinued at approximately 8:00 p.m. A computed tomography ("CT") scan identified a hematoma in her abdomen. Ms. Velazquez was transferred to the cardiac intensive care unit, and later to the medical intensive care unit. She received a number of blood and plasma transfusions over the next two days. On March 30, 2008, Ms. Velazquez's grandson signed a "do not resuscitate" order, and she died later that day. No autopsy was performed, but the death certificate lists the cause of death as cardiopulmonary arrest secondary to cardiogenic shock, septic shock, and pneumonia.

Plaintiff's daughter Evelyn Martinez commenced this action by the filing of a summons and verified complaint and the purchasing of an index number on March 5, 2010. Defendants answered shortly thereafter. Plaintiff's essential allegations are that defendants ignored

Ms. Velazquez's blood studies and PTT values; failed to recognize elevated PTT levels and the risk that Ms. Velazquez could suffer internal bleeding; prescribed contraindicated antiplatelets (aspirin and Plavix); failed to order, perform, and/or read timely and adequate studies; and failed to advise plaintiff, as Ms. Velazquez's healthcare proxy, of the risks, dangers, and alternatives to the treatment administered to Ms. Velazquez.

Defendants now seek summary judgment. It is "a cornerstone of New York jurisprudence that the proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." Ostrov v. Rozbruch, \_\_\_ A.D.3d \_\_\_, 2012 N.Y. Slip Op. 22, \*\*9-10 (1st Dep't January 3, 2012), citing Winegrad v. New York City Med. Ctr., 64 N.Y.2d 851, 853 (1985). To be entitled to summary judgment, a defendant in a medical malpractice action must demonstrate "the absence of any deviation or departure from accepted medical practice, or that any such departure was not a proximate cause of the injury or damage alleged." King v. St. Barnabas Hosp., 87 A.D.3d 238, 246 (1st Dep't 2011). Once a defendant meets this burden, it is incumbent upon the plaintiff to proffer evidence sufficient to establish the existence of a material issue of fact requiring a trial. Ostrov, at \*\*10, citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986). In medical malpractice actions, expert medical testimony is the gine qua non for demonstrating either the absence or presence of material issues of fact pertaining to departure from accepted medical practice or proximate cause.

In support of summary judgment, defendants submit an expert affirmation from Stephen Siegel, M.D., a physician duly licensed to practice medicine in the State of New York, who

\* 6]

affirms that he is board certified in internal medicine and cardiovascular disease. He states that his opinions are based on his review of the medical records, deposition transcripts, plaintiff's bills of particulars, and his experience and expertise in the fields of cardiology and cardiovascular disease. He opines, to a reasonable degree of medical certainty, that defendants' care and treatment of Ms. Velazquez was in accordance with accepted standards of practice and that nothing they did or failed to do caused or contributed to the injuries claimed. Dr. Siegel opines that defendants comported with the standard of care that PTT levels be monitored at least every six (6) hours while a patient is on unfractionated heparin. He further opines that the physicians' decision to discontinue unfractionated heparin and start aspirin and Plavix after Ms. Velazquez's PTT levels did not normalize on March 25, 2008, was in conformity with the standard of care for treatment of NSTEMI. Dr. Siegel opines that once demand ischemia was added to Ms. Velazquez's differential diagnosis, her medical condition put her at risk for developing a deep vein thrombosis, and thus it was incumbent to prescribe "low dose" heparin. He states that the decision to administer low dose heparin indicates that defendants timely and properly interpreted the results of diagnostic studies. He opines that patients on low dose heparin do not need monitoring of PTT, PT, or INR, as do patients on unfractionated heparin. Regardless, he opines, Hospital staff continued to monitor Ms. Velazquez for any signs of bleeding, in conformity with the standard of care. Dr. Siegel opines that defendants' diagnosis of atrial fibrillation in the early hours of March 26, 2008, again shows that they timely and properly interpreted the results of aforementioned diagnostic studies.

Dr. Siegel sets forth that with the use of anticoagulants, there is a known risk of the development of bleeding, as anticoagulant treatment prevents blood from clotting. He states,

however, that where a patient's medical condition reveals a likelihood of myocardial infarction, stroke, or deep vein thrombosis, it is necessary to administer anticoagulants despite the potential risk of the patient developing a bleed. Dr. Siegel opines that in this case, defendants properly evaluated the risks of a bleed against the benefits of preventing a stroke, and their decision to administer anticoagulants comported with the standard of care. As to the fact that defendants administered Lovenox and warfarin at the same time, Dr. Siegel opines that this treatment was within the standard of care because warfarin takes time to become effective, and that in order to continue treating Ms. Velazquez with anticoagulants before the warfarin became effective, it was necessary to continue the Lovenox. He states that the long term treatment plan was to discontinue Lovenox and only treat with warfarin. He opines that once Ms. Velazquez had positive signs of bleeding on March 28, 2008, Lovenox, Plavix, and aspirin were discontinued in keeping with the standard of care.

In opposition, plaintiff submits an affirmation from a physician (name redacted) duly licensed to practice medicine in the State of New York and board certified in internal medicine. Plaintiff's expert states that his/her opinions are based on a review of the pertinent medical records, the New York State Department of Health ("DOH") Statement of Deficiencies regarding Ms. Velazquez's admission to the Hospital, the parties' deposition testimony, and Dr. Siegel's affirmation. Plaintiff's expert states that Ms. Velazquez was noted to have been treated with chronic antiplatelet therapy (aspirin) upon her admission to the Hospital, and she was then placed on anticoagulant therapy (heparin). The expert states that it is well recognized in the medical community that a combination of antiplatelet and anticoagulation therapy increases a patient's risk of bleeding. When Ms. Velazquez experienced the excessive response to the heparin with PTT

values of 180.3 and 198, plaintiff's expert opines that proper medical care required defendants to discontinue both the anticoagulants and the antiplatelets, as antiplatelet medications such as aspirin and Plavix are known to diminish the ability of platelets to clot and put patients at a significantly increased risk of bleeding even in the absence of anticoagulants. The expert notes that in the Statement of Deficiencies, DOH found that defendants' care did not meet generally acceptable standards of professional practice (10 N.Y.C.R.R. § 405.2[f]) after Ms. Velazquez's PTT levels increased to 4-5 times the normal value because, while anticoagulants were discontinued, she was continued on antiplatelets with a known side effect of bleeding, and she later experienced a large internal bleed. DOH also found that the Hospital's pharmacy did not ensure Ms. Velazquez's health and safety (10 N.Y.C.R.R. § 405.17[a]) because it did not ensure that antiplatelets were discontinued after she experienced a significantly elevated PTT.

Plaintiff's expert opines that it was a departure to initiate Lovenox therapy for this patient. He/she sets forth that Ms. Velazquez was already on two antiplatelets, aspirin and Plavix, which would render platelets incapable of clotting. The expert opines that there was no evidence that she had a thrombotic condition, so aspirin and Plavix should have been discontinued and she should have been infused with fresh frozen plasma and platelets. The expert opines that an infusion of fresh frozen plasma and platelets, after Ms. Velazquez's PTT levels dramatically increased, could have protected her from developing a bleed, and opines that the delay in performing transfusions until March 28, when she was acutely ill, allowed the abdominal bleed to develop or to be exacerbated to the point where treatment was futile. The expert contends that it was a departure to continue anticoagulants after March 25, since there was an urgent need to restore homeostasis and clotting

factors that would protect the patient from hemorrhage. Rather, by March 26, 2008, defendants had Ms. Velazquez on two anticoagulants (Lovenox and warfarin) and two antiplatelets (aspirin and Plavix), which plaintiff's expert opines exacerbated Ms. Velazquez's risk of a bleed. Plaintiff's expert opines that Ms. Velazquez had no indication of deep vein thrombosis, but even if she had, defendants could have administered other protective measures (such as anti-emboli stockings or an inferior vena cava filter) instead of administering anticoagulant therapy. The expert contends that Dr. Siegel's opinion that it was necessary to prescribe low dose heparin due to the risk of deep vein thrombosis is misguided.

Plaintiff's expert opines that defendants' failure to discontinue anticoagulation and antiplatelet therapy, and failure to administer fresh frozen plasma with platelet transfusion, on March 25-27, 2008, were departures from good and accepted medical practice and caused Ms. Velazquez to develop the abdominal bleed and, ultimately, her death on March 30, 2008. Had proper treatment been provided, the expert believes that Ms. Velazquez would not have suffered the bleed which ultimately caused her death. Plaintiff's expert opines that, at the very least, defendants' departures diminished her chance of a better outcome and deprived her of survival.

While defendants presented expert testimony demonstrating that they did not depart from the standard of care and that nothing they did proximately caused injury to Ms. Velazquez, plaintiff has presented expert testimony sufficiently rebutting defendants' proof and establishing that material issues of fact remain in dispute. The experts dispute the measures that defendants should have taken once Ms. Velazquez's PTT levels reflected a dramatic increase in her clotting time. Dr.

Siegel's opinion that, even after her PTT levels spiked, it was proper and necessary to keep Ms. Velazquez on antiplatelets and low dose anticoagulants, is sharply disputed by plaintiff's expert's opinion it was necessary to discontinue anticoagulants and antiplatelets, and that restarting even low dose anticoagulants was improper. Further, while Dr. Siegel opines that, given Ms. Velazquez's history, it was necessary to administer anticoagulants despite the potential risk of her developing a bleed, plaintiff's expert opines that the risks of a bleed could have been mitigated by administering plasma and platelets earlier in the course of treatment; that the risk of deep vein thrombosis could have been treated in alternative ways to anticoagulant treatment; and that the risk of developing a bleed was exacerbated by the continued administration of antiplatelets. Both experts have examined the same materials and have reached differing opinions. It is well settled that a battle of experts, such as presented here, raises credibility issues which must be resolved by a fact finder and which preclude summary judgment. Frye v. Montefiore Med. Ctr., 70 A.D.3d 15, 25 (1st Dep't 2009); Barnett v. Eashakin, 85 A.D.3d 832 (2d Dep't 2011); Barbuto v. Winthrop Univ. Hosp., 305 A.D.2d 623, 624 (2d Dep't 2003).

As to the claim for lack of informed consent, neither plaintiff's attorney nor her expert address, in any substance, plaintiff's claim that defendants failed to obtain Ms. Velazquez's consent for the procedures performed and/or failed to obtain the consent of her healthcare proxy (plaintiff, Ms. Velazquez's daughter) once Ms. Velazquez could not consent herself. Defendants' expert opined that defendants kept plaintiff informed of the treatment progress and that the Hospital obtained her consent for the transfusions. As plaintiff has neither addressed nor provided expert testimony on the claim for lack of informed consent, it appears that she has abandoned this claim and it is hereby dismissed. Accordingly, it is hereby

ORDERED that the branch of defendants' motion seeking summary judgment dismissal of the claim for lack of informed consent is granted, and plaintiff's claim for lack of informed consent is hereby dismissed, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that the branch of defendants' motion seeking summary judgment dismissal of the claim for medical malpractice and wrongful death is denied; and it is further

ORDERED that the parties shall appear for a pre-trial conference on January 24, 2012. at 10:00 a.m., in Part 6.

Dated: Jan. 11, 2012

ENTER:

  
JOAN B. LOBIS, J.S.C.

**FILED**

**JAN 12 2012**

**NEW YORK  
COUNTY CLERK'S OFFICE**