To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF DUTCHESS

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PANO HARPOLIS,

Plaintiff,

-against -

MID HUDSON MEDICAL GROUP, P.C., ROBERT MORGANTINI, R.N.F.A., HUDSON VALLEY CENTER AT SAINT FRANCIS, L.L.C., and SPYROS PANOS, M.D.,

Defendants.

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DECISION & ORDER

Index No. 754-2012

Sequence No. 1

LUBELL, J.

The following papers were considered in connection with this motion by defendant, Mid Hudson Medical Group, P.C. for an Order pursuant to CPLR 3211(a)(7) dismissing any and all claims against Mid Hudson Medical Group, P.C. which purportedly sound in ordinary negligence; and for such other and further relief as this Court may deem just and proper:

PAPERS	**NUMBERED**
Motion/Affirmation/Exhibits A-B	1
Affirmation in Opposition (Harpolis)	2
Reply Affirmation (Mid Hudson)	3

Plaintiff commenced this action on February 8, 2012, to recover damages for injuries sustained on May 4, 2010, to his left knee due to alleged actions and/or inactions of defendant Spyros Panos, M.D. ("Panos"), an orthopedic surgeon, defendant Robert Morgantini, R.N.F.A. ("Morgantini"), defendant Mid Hudson Medical Group, P.C. ("Mid Hudson"), the medical group with which he was employed, and defendant Hudson Valley Center at St. Francis, L.L.C. ("HVC"), the medical facility at which the underlying medical procedure took place.

Mid Hudson's CPLR §3211(a)(7) motion to dismiss any and all claims to the extent that they "purportedly" sound in ordinary

negligence is denied upon the condition plaintiff serves and files amended pleadings as herein permitted separating out causes of action for medical malpractice from ordinary negligence and those claims based upon vicarious liability and negligent supervision and the like.

The Court is satisfied that the complaint sufficiently states a cause of action for ordinary negligence against Mid Hudson, notwithstanding other language contained therein suggesting and even indicating that the claim against Mid Hudson is for medical malpractice. The complaint also sufficiently advances claims against Mid Hudson based upon negligent supervision and, alternatively, vicarious liability.

As such, the Court finds that since the applicable period of limitations to the claims against movant for negligence is three years (CPLR §214[5]), this action as measured from the May 4, 2010, date of accrual to the February 8, 2012, date of commencement, is timely, but only upon the condition that, within thirty days hereof, plaintiff serves and files a Supplemental Summons and Amended Verified Complaint separating out plaintiff's cause of action for ordinary negligence as against movant into a separate cause of action which is, in all respects, within the three year period limitations and upon the condition that plaintiff separates out its vicarious liability theory of recovery from those based upon ordinary negligence. Its is not improper to plead negligent supervision and, in the alternative, vicarious liability even though, in the end, plaintiff can only prevail on one theory over the other (see Segal v St. John's Univ., 69 AD3d 702, 703 [2d Dept 2010][upon motion for summary judgment, dismissal of cause of action for negligent supervision appropriate where it is indisputably that employee was acting within the scope of his employment with another, in which case recovery maybe under the doctrine of respondeat superior]).

The amended pleading herein permitted or directed or otherwise hereafter filed and served in this action, shall be in *full and strict compliance* with CPLR 3014 which, the Court notes, is woefully not the case with respect to the current complaint. This directive applies to the entirety of the Verified Amended Complaint as it relates to all defendants and all causes of action and theories of recovery as against each, even though same may not have been addressed in this Decision & Order.

Section 3014 provides:

> Every pleading shall consist of plain and concise statements in consecutively numbered

> paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters. Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated alternatively or hypothetically . . . [Emphasis added]

Among other things, plaintiff is directed to serve and file a Verified Amended Complaint wherein causes of action against the various defendants are broken out as to one defendant from the other and, where there are multiple theories of liability as against a defendant, same shall be stated in separate causes of action against that particular defendant.

In this and the many related cases against these and other defendants, the Court has been presented with a complaint containing two causes of action. The first cause of action seemingly combines medical malpractice claims against one or more defendants with claims of ordinary negligence against one or more defendants, not necessarily the same defendants, with theories of recovery ranging from primary liability to vicarious liability and even liability based upon an acting in concert theory. In addition, the various allegations against the various defendants, although set forth separately as to each defendant, are stated in a bill-of-particular style, run-on paragraph, all contrary to the dictates of section 3014 ("Each paragraph shall contain, as far as practicable, a single allegation").

Furthermore, all future motions in this and any related action and any responses and replies to same shall be captioned with particularity so that one can readily determine, without the need to delve into the text of the submission, what the submission is for. For example, "Notice of Motion to Dismiss" is not helpful where the Court is presented with a plethora of motions by various defendants seeking to dismiss various causes of action or parts thereof. Nor is "Affirmation in Opposition" or "Attorney Affirmation" instructive where the Court is presented with fourteen separate submissions to various motions and cross-motions. Each submission shall identify the nature of the paper (Notice of Motion, Affirmation in Opposition, etc), the party for whom the

submission is made, and the nature of the underlying motion. For example, "Notice of Motion by Defendant Vassar to dismiss First Cause of Action - Statute of Limitations"; "Affirmation in Opposition by Plaintiff to Defendant Mid Hudson's Motion to Dismiss - Statute of Limitations").

Finally, the word "defendant" should not be used without the name of the particular defendant immediately following it.

PLAINTIFF SHALL SERVE AND FILE A VERIFIED AMENDED COMPLAINT IN THE FORM HEREIN DIRECTED SO AS TO BE RECEIVED WITHIN THIRTY DAYS HEREOF.

EVEN WHERE PLAINTIFF'S MOTION TO AMEND THE COMPLAINT HAS BEEN DENIED, PLAINTIFF IS DIRECTED TO RECAST IT'S COMPLAINT IN CONFORMITY WITH THE DICTATES OF CPLR 3014 AND SERVE AND FILE A VERIFIED AMENDED COMPLIANT WITHIN THIRTY DAYS OF THE DATE HEREOF.

DEFENDANTS SHALL RESPOND TO SAME SO AS TO BE RECEIVED WITHIN TWENTY FIVE DAYS OF SERVICE.

The parties are reminded of the already scheduled April 15, 2013, 2 P.M., Compliance Conference.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: Carmel, New York
January 4 , 2013

S/ _____
HON. LEWIS J. LUBELL, J.S.C.

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