SHORT FORM ORDER

INDEX No. 08-45025
CAL. No. 12-01036MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 34 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH C. PASTORESSA
Justice of the Supreme Court

MOTION DATE 10-18-12
ADJ. DATE 3-6-13
Mot. Seq. # 001 - MG
002 - MG

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LOLA CALDERON,

Plaintiff,

- against -

GOOD SAMARITAN HOSPITAL MEDICAL CENTER, STEPHANIE LOVELL-ROSE, M.D., ERIKA HIBY, M.D., MAAN SHIKARA, M.D. and UNIVERSAL FAMILY MEDICAL CARE,

Defendants.

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Upon the following papers numbered 1 to 36 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers (001)1 -17; (002) 18-28; Notice of Cross Motion and supporting papers _; Answering Affidavits and supporting papers 29-31; Replying Affidavits and supporting papers 32-33; 34-36; Other _; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that motion (001) by the defendant, Stephanie Lovell-Rose, M.D., pursuant to CPLR 3212 for summary judgment dismissing the complaint and any cross claims asserted against her is granted; and it is further

ORDERED that motion (002) by the defendant, Good Samaritan Hospital Medical Center, pursuant to CPLR 3212 for summary judgment dismissing the complaint and any cross claims asserted against it as to

claims of vicarious liability for the actions of defendant Stephanie Lovell-Rose, is granted.

In this medical malpractice action, the plaintiff, then nineteen year-old Lola Calderon, seeks damages for personal injuries she alleges to have sustained as a result of negligent departures from the accepted standard of care by the defendants in failing to timely and properly diagnose and treat her for appendicitis. The plaintiff had been seen in the emergency room of Good Samaritan Hospital on August 21, 2008 by defendant Stephanie Lovell-Rose, M.D. She was examined, treated, and released with a diagnosis of gastroenteritis, and was to follow up with her own physician within two to four days, or sooner if the symptoms became worse, or return to the emergency room. On August 23, 2008, the plaintiff was seen by her doctor, Dr. Shikara, who examined her and released her with the medication Donnatal for abdominal cramping. On August 25, 2008, the plaintiff's father called Dr. Shikara who then spoke with the plaintiff and instructed her to stop the medication and go the emergency room. On August 31, 2008, Dr. Shikara called the plaintiff and spoke with her father, again advising him to take plaintiff to the emergency room as she was continuing to have pain, and had not gone to the emergency room as previously advised. The plaintiff began running a fever on September 3, 2008. On September 5, 2008, she was taken to Good Samaritan Hospital where she was seen by Jonathan Golden, M.D. and Rudolph Baldeo, M.D. and was admitted. On September 6, 2008, the plaintiff had an exploratory laparotomy at which time it was found she had a perforated appendix, positive appendocolith, and a large pelvic abscess for which an appendectomy with partial cecectomy and drainage of the pelvic abscess was performed. On September 29, 2008, the plaintiff returned to the emergency room at Good Samaritan Hospital where she was seen by defendant Stephanie Lovell-Rose, M.D. and admitted to the hospital. She was treated for an abdominal abscess which was drained with CT guidance by an interventional radiologist. Causes of action for negligence and lack of informed consent have been asserted in the complaint. No cross claims have been raised in the defendant's respective answers.

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 (***Friends of Animals v Associated Fur Mfrs.***, 46 NY2d 1065 [1979]; ***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851 [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 [1980]). The opposing party 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 [1981]).

Defendant Stephanie Lovell-Rose, M.D. seeks summary judgment dismissing the complaint as asserted against her on the bases that she provided appropriate care and treatment to the plaintiff; that the care and treatment rendered by her did not deviate from the accepted standard of medical care; that her treatment of the plaintiff was not a proximate cause of any of the injuries alleged by the plaintiff; and that there is no merit to the cause of action for lack of informed consent. In support of motion (001), defendant Stephanie Lovell-Rose, M.D. has submitted, inter alia, an attorney's affirmation; copies of the summons and complaint, the answer served by each defendant, none of whom have asserted a cross claim against the other; plaintiff's bill of particulars and further bill of particulars; transcripts of the examinations before trial of Lola Calderon dated April 5, 2010 and February 23, 2011, Stephanie Lovell-Rose, M.D. dated May 13, 2011, which are in admissible

form; the unsigned transcript of the examination before trial of Mann Shikara, M.D. dated August 15, 2011to which he has not objected and is considered (***Zalot v v Zieba***, 81 AD3d 935[2d Dept 2011]); the unsigned transcript of non-party Frank Canales which is not signed and is thus inadmissible (*see* ***Martinez v 123-16 Liberty Ave. Realty Corp.***, 47 AD3d 901 [2d Dept 2008]; ***McDonald v Maus***, 38 AD3d 727 [2d Dept 2007]; ***Pina v Flik Intl. Corp.***, 25 AD3d 772 [2d Dept 2006]); uncertified copies of the Good Samaritan Hospital record and the record maintained by Universal Family Medical Care to which plaintiff has not objected to; and the expert affidavit of William C. Miller, D.O.

Defendant Good Samaritan Hospital Medical Center seeks summary judgment dismissing the complaint on the bases that it is not vicariously liable as to defendant Stephanie Lovell-Rose, M.D. as she did not depart from the accepted standards of care and treatment, and that the care and treatment provided by Stephanie Lovell-Rose, M.D. was not the proximate cause of any injuries alleged by the plaintiff. In support of motion (002), defendant hospital adopts and incorporates by reference those exhibits and arguments proffered in motion (001).

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 [1998], *app denied* 92 NY2d 818). 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 [1980]; ***Prete v Rafla-Demetrious,*** 221 AD2d 674 [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 [1998], *app denied* 92 NY2d 814; ***Bloom v City of New York,*** 202 AD2d 465 [1994]).

Lola Calderon testified to the extent that in 2008, she was nineteen years of age. Her legal guardians were Frank Canales, who is her uncle, and his wife, Gloria Oneda Canales. She first became a patient of Drs. Hiby and Shikara in about 2002 for physicals and skin care. On August 21, 2008, she presented to Good Samaritan Hospital emergency room with complaints of pain in her lower right abdomen, a little below her stomach, which started about 7:00 p.m., about an hour or two after eating a burger and fries at Burger King. She began to vomit at the hospital. She described her care and treatment and testified that her father asked for a CT scan. She stated that she was told she had food poisoning and was discharged to home on the morning of August 22, 2008, and provided instructions. She thought she went to see Dr. Shikara for stomach pain the following day and advised him that she had been seen at the hospital. Dr. Shikara examined her, but did not take any blood tests, and did not refer her to any other doctor to be seen. He gave her some medication to decrease the pain in her abdomen. Because she felt the medication was making her weak, her father called Dr. Shikara's office on August 25th and spoke to him. She also spoke with Dr. Shikara and was told to stop the pills. The plaintiff testified that she was getting worse through August 31, 2008. Her father called Dr. Shikara's office on August 31, 2008. She denied that her father had taken her to a woman's house for "empacho." Up to September 5, 2008, she saw no doctors and sought no medical care and treatment, although she was feeling worse, started running high temperatures, and had pain with urination. She testified that when she went to the hospital on September 5, 2008, she was explained the "consequences" of the CT exam, tests and surgery.

Stephanie Lovell-Rose, M.D. testified to the extent that she is licensed to practice medicine in New York and California, and her license is pending in North Carolina. She became board certified in emergency medicine in 2005. Dr. Lovell-Rose testified that she first saw the plaintiff in the emergency room at Good Samaritan Hospital on August 22, 2008 at 12:41 a.m. for diffuse and migratory abdominal pain, particularly in

the lower abdomen, accompanied by nausea, vomiting, and diarrhea. She described the examination she performed and her findings. Her impression was likely acute gastroenteritis, which she felt was probably viral in nature. She stated that it was acute as it had a rapid onset of symptoms following ingestion of a meal at Burger King. She noted that there was an "elevated white blood cell likely due to acute demarginalization rather than infection." She testified that marginalization was a phenomenon whereby the white blood cells that normally roll down the side of the blood vessels emarginate and move away from the walls into the lumen of the blood vessels, and is seen with acute stress, extreme exercise, and is one reason that a white blood cell count can be transiently or artificially elevated. Dr. Lovell-Rose continued that because the plaintiff was afebrile, she did not have an elevated pulse, and her abdominal pain resolved before she was discharged, this further supported the conclusion that the elevated white blood cell count was due to an acute demarginalization event rather than infection. She added that on the differential, the lymphocytes were low at 8.5, and the neutrophils were elevated to 88%, further supporting the diagnosis of demarginalization, as the cells that emarginate are neutrophils.

Dr. Lovell-Rose testified that she did not make a differential diagnosis, though she considered infection which was not supported by her history, physical exam, and course in the emergency department. When the plaintiff's father queried her about getting a CT scan, she explained to him that it is not a test to be taken lightly in that someone with abdominal pain had to drink a large amount of contrast which can cause discomfort and further vomiting, that it takes several hours, that it involves a healthy dose of radiation which can lead to cancer, and that it is a test that would be done if there was a high concern or suspicion for an infectious process. Dr. Lovell-Rose testified that she did not feel the plaintiff needed a CT scan or additional abdominal imaging because she was non-tender and her abdominal pain had resolved. She advised the plaintiff to return to the emergency room or to see her medical doctor, and that she had some abnormal lab values which had to be followed with her doctor in a couple of days. She did not see the patient thereafter until she saw her in the emergency room on September 29, 2008, when the plaintiff presented with post-operative abdominal pain. She learned that the plaintiff presented to the emergency room with abdominal pain and fever about two weeks after she had seen her on August 22, 2008, and that she had an appendectomy. On September 29, 2008, she examined the plaintiff, obtained a repeat CT scan, and admitted her to Good Samaritan Hospital surgical service as the CT scan suggested that the plaintiff had a continued abdominal abscess. Thereafter, she did not see or examine the plaintiff again.

Maan Shikara, M.D. testified to the extent that he has been licensed to practice medicine in New York State since 2001 and is certified in family medicine. He has a partnership with Dr. Erika Hiby under the name Universal Family Medical Care, P.C. which has been in existence since 2002. He saw the plaintiff for a physical exam on one occasion prior to August 23, 2008, and that usually the plaintiff saw Dr. Hiby. He stated that he was working on August 23, 2008, and the plaintiff presented for follow up care after having been seen in the emergency room the day before. She complained to him of crampy, diffused, non-radiating abdominal pain, nausea and vomiting, and watery diarrhea. She denied having a fever, sore throat or earache, neck pain or stiffness, or other problems. Her temperature was 98.3. Upon examination, his findings were all within normal limits and she appeared to be in no acute distress. She had positive bowel sounds, no tenderness, distention, rebound psoas, murphy or obturator signs, no masses and no hepatosplenomegaly. He described the examination performed. He diagnosed her as having gastroenteritis, advised her to take fluids and to rest, and gave her Donnatal tablets as directed for abdominal cramps. He discussed risks, benefits, and side effects of the medication. She was to return to the office in two to three days if not feeling better, or to go to the emergency room if her condition worsened. Based upon the history and physical, he did not find the need for further blood tests.

Dr. Shikara continued that the plaintiff did not return to his office, but stated that the plaintiff's father called him on August 25, 2008, asking for stronger medication. He asked to speak with the plaintiff but she was not put on the phone. He thereafter spoke with the plaintiff who advised that the diarrhea and pain increased. She was advised to stop the medication and to go to the emergency room immediately, which she agreed to do. He did not speak to her again after that date. On Sunday, August 31, 2008, he made a call to the plaintiff to find out which hospital she went to, but since she was not home, he spoke with her father. His office note indicated that the father, Frank Canales, advised him that he and his wife decided that she had "empacho" so she went to a woman's house to get treatment. Shikara advised the father that since she still had pain, she might have a serious condition or infection, and might even die. He asked for the plaintiff's telephone number, but the father was very rude to him and hung up. Shikara stated that he studied Spanish, but did not know what empacho was. He had no further contact with the plaintiff after August 25, 2008.

Defendants' expert, William C. Miller, D.O., avers that he is licensed to practice medicine in New York State and is board certified in surgery. He set forth his education and training, and stated he maintains a private practice in the field of surgery. He set forth the materials and records which he reviewed and opined with a reasonable degree of medical certainty that Stephanie Lovell-Rose, M.D. did not depart from the accepted standard of care in treating Lola Calderon, and that the care and treatment rendered to her was not the proximate cause of the plaintiff's alleged injuries.

Dr. Miller set forth that the plaintiff presented to Good Samaritan Hospital emergency department, where she was seen by defendant Lovell-Rose shortly after 11:00 p.m. on August 21, 2008, with the chief complaint of abdominal pain, vomiting and diarrhea, preceded by eating at Burger King that evening. Dr. Miller set forth the examination and diagnostic testing performed by Dr. Lovell-Rose, including blood work which revealed a white blood count of 19.5, elevated above the normal range of 4.5 to 11.0. At 4:00 a.m. on August 22, 2008, the plaintiff no longer had pain in her abdomen. A CT scan was requested by the plaintiff's father, Mr. Canales, however, the CT scan was advised against as the clinical condition, history, and physical examination did not warrant the risks associated with the CT scan radiation and the contrast material. He added that there was no clear indication of a suspicion of an acute abdominal process to warrant the exam. The plaintiff was discharged on the morning of August 22, 2008, with instructions to see her private medical doctor in two to four days, or if the condition worsened or new symptoms developed, to call her doctor or return to the emergency room.

Dr. Miller continued that the plaintiff did not seek medical care on August 22, 2008, and on August 23, 2008, presented to her doctor, Dr. Shikara, with crampy, abdominal pain which sometimes went to her belly button into the epigastric area, and watery diarrhea with no blood. She did not have fever, nausea, or vomiting. Examination revealed positive bowel sounds, no tenderness, distention, or rebound, and no positive psoas, Murphy or obturator signs, no masses, and no hepatosplenomegaly. Dr. Miller described the testing and how it was done by Dr. Shikara, who diagnosed the plaintiff with abdominal cramps, diarrhea, and gastroenteritis of viral origin. The plaintiff was to return to the office in two to three days if not better, or if there was worsening, to go to the emergency department. Her condition on the 24th was better than it was on the 22nd. On August 25, 2008, the plaintiff called Dr. Shikara indicating the pain and diarrhea had increased, so she was instructed go to the emergency room immediately, to which she agreed, but did not go for further care and treatment as instructed.

Dr. Miller stated that on August 31, 2008, Dr. Shikara called the plaintiff's home and spoke to her father, Mr. Canales, as the plaintiff was not home. Dr. Shikara testified that Mr. Canales indicated that the plaintiff did not go to the emergency room, and that Lola and her parents decided she had empacho (a stomach

ache). It was again advised that the plaintiff go to the emergency room. Thereafter, the plaintiff had pain, was not eating, had a fever, and stayed in bed between August 31st and September 5th. On September 5, 2008, she developed weakness, had severe abdominal pain which worsened with urination, and she could not walk. Dr. Miller continued that from August 22, 2008 through September 5 2008, the plaintiff did not go to any hospitals for care and treatment, and had only that one visit with Dr. Shikara.

Dr. Miller continued that on September 5, 2008, the plaintiff returned to the emergency department at Good Samaritan Hospital where she was examined, intravenous antibiotics were started, and an ultrasound of the pelvis was done, as well as a CT scan of the abdomen and pelvis with oral and intravenous contrast. The pelvic/abdominal CT scan revealed multiloculated abscesses throughout the pelvis; significant inflammatory changes in the right lower quadrant in the area of the cecum and terminal ileum; probable appendocolith; and free air in the right lower quadrant. The differential diagnosis was appendicitis with perforation, advanced Crohn's disease with a low suspicion of tubo-ovarian abscess. She was admitted to Good Samaritan where Dr. Scott Wodicka performed an exploratory laparotomy, an appendectomy with partial cecectomy, and drainage of the pelvic abscesses for appendicitis and positive appendicolith.

Dr. Miller opined that Dr. Lovell-Rose did not ignore the plaintiff's signs and symptoms or complaints of abdominal pain, fever, nausea, diarrhea and vomiting. She had diagnosed the plaintiff with gastroenteritis, a medical condition characterized by inflammation of the gastrointestinal tract that involves both the small intestine and the stomach, resulting in a combination of mild to moderate diarrhea, abdominal pain and cramping, and which could be due to consumption of improperly prepared foods, or contaminated water, or from close proximity to other infectious individuals. He continued that signs and symptoms of appendicitis include rebound tenderness, loss of appetite, abdominal swelling, fever up to 102 F, inability to pass gas, painful urination and constipation, all of which were not present in the plaintiff on August 21 or 22, 2008 while she was at the emergency room at Good Samaritan Hospital. Additionally, the plaintiff did not present with moderate to severe tenderness focused in the right lower abdomen, but instead had diffuse, migratory pain. Due to the rapid onset of her symptoms, she was properly diagnosed with gastroenteritis. Dr. Miller added that an elevated white blood cell count is an indication of an infection, though it is non-specific to the cause of the infection, and thus the plaintiff's elevated white count on August 22, 2008 was not indicative of appendicitis. A CT scan was not warranted due to the plaintiff's presenting symptoms. Dr. Miller opined that at this time, the plaintiff's presenting symptoms and social history indicated she was suffering from acute gastroenteritis, and not appendicitis, and thus Dr. Lovell-Rose did not negligently diagnose the plaintiff with gastroenteritis. He continued that when Dr. Shikara examined the plaintiff on August 24, 2008, she had no tenderness, no distention, no rebound tenderness, no psoas or obturator signs used to rule out appendicitis, and he diagnosed her with viral gastroenteritis.

Dr. Miller opined that while the plaintiff subsequently developed symptoms of appendicitis, those symptoms were not present when she presented for treatment on August 22, 2008 to the emergency room in that her symptoms were inconsistent with appendicitis. The plaintiff was appropriately instructed upon discharge from the emergency room to follow up with her doctor in two to four days, or to return with worsening or new symptoms to either the doctor or the emergency room. Dr. Miller continued that the plaintiff failed and neglected to follow those instructions and failed to obtain additional treatment when her condition continued for thirteen days and significantly worsened through September 5, 2008. Dr. Miller further opined that there was no failure to provide informed consent to the plaintiff as the alleged injuries are claimed to be due to the failure to diagnose and treat the plaintiff, and not due to the failure to provide risks, benefits, or alternatives to a procedure or treatment. He added that there is no proximate cause between any lack of informed consent, and the injuries claimed by the plaintiff.

Based upon the foregoing, it is determined that the defendants in motions (001) and (002) have demonstrated entitlement to summary judgment dismissing the complaint. Defendant Lovell-Rose demonstrated that she did not depart from the standard of care and treatment of the plaintiff or that she failed to provide the plaintiff with informed consent. It was further demonstrated by her that there is nothing that she did or did not do which proximately caused any of the injuries claimed by the plaintiff. Thus, without a finding of liability as to defendant Lovell-Rose, there is no vicarious liability imputed to defendant Good Samaritan Hospital.

To rebut a prima facie showing of entitlement to an order granting summary judgment by the defendant, the 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 defendant's 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 [2d Dept 2004]; ***Domaradzki v Glen Cove OB/GYN Assocs.***, 242 AD2d 282 [2d Dept 1997]). "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. Such credibility issues can only be resolved by a jury" (***Bengston v Wang,*** 41 AD3d 625 [2d Dept 2007]). In the instant action, the plaintiff has submitted an unsigned and redacted copy of her expert, and has not provided a signed and unredacted copy of the affidavit for this court's review.

A redacted version of an expert affidavit lacks evidentiary value (***Marano v Mercy Hospital,*** 241 AD2d 48, 670 NYS2d 570 [2d Dept 1998]). A party may successfully oppose a summary judgment motion without disclosing the names of the party's expert witnesses. In opposition to such a motion the party defending against a summary judgment motion may serve the movant with a redacted copy of its expert's affirmation as long as an unredacted original is provided to the court for its in camera inspection (***Marano v Mercy Hospital***, *supra*). This procedure preserves the confidentiality of the name of plaintiff's medical expert while also preserving plaintiff's obligation in opposing defendant's motion, in that by submitting a redacted affirmation and by offering the original to the court for in camera inspection, plaintiff has opposed the motion by evidence in admissible form (***Rubenstein v Columbia Presbyterian Medical Center,*** 139 Misc.2d 349, 527 NYS2d 680 [NY County 1988]). A copy of the affidavit with the expert's name and signature have not been provided to this court under separate cover. Accordingly, plaintiff's expert affidavit is not in admissible form and is insufficient to raise a triable issue of fact as to the defendant's alleged malpractice (***Rose v Horton Medical Center,*** 29 AD3d 977, 816 NYS2d 174 [2d Dept 2006]).

Even if the court were to consider the affidavit by plaintiff's expert, the plaintiff's expert failed to address the issue of proximate cause concerning the failure of the plaintiff to obtain medical care and treatment during the ensuing thirteen days until September 5, 2008, after having been seen by defendant Lovell-Rose on August 22, 2008 and Dr. Shikara on August 24, 2008. The plaintiff's expert did not opine whether the plaintiff would have sustained the same injuries had she sought care and treatment during that thirteen-day time frame. While the plaintiff's expert opined that defendant Lovell-Rose erroneously or negligently diagnosed the plaintiff with gastroenteritis, Dr. Shikara also diagnosed the plaintiff with gastroenteritis on August 24, 2008, but plaintiff's expert does not address this to demonstrate that there was another opportunity to diagnose the plaintiff's condition. Nor does the plaintiff's expert opine as to when the plaintiff's appendix perforated. The plaintiff's expert opined that Dr. Lovell-Rose erroneously atrributed the while blood cell count of 19.5 to acute demarginalization rather than infection. However, plaintiff's expert does not set forth the basis for this conclusory opinion or address the remainder of the findings of the blood test, notably the differential, to be considered in conjunction with the while blood cell count. Thus, it is determined that the plaintiff's expert's opinion is conclusory and unsupported. The plaintiff's expert does not address the issue of proximate cause.

Based upon the foregoing, even if the plaintiff's expert's affidavit had been submitted in unredacted form to this court for in camera inspection, it is determined that the plaintiff has failed to raise a factual issue to preclude summary judgment from being granted to Dr. Lovell-Rose on the issues of negligence or proximate cause, or lack of informed consent, or to Good Samaritan Hospital on the basis that it is not vicariously liable for Dr. Lovell-Rose in that no liability has been established against Dr. Lovell-Rose.

Accordingly, motions (001) and (002) are granted and the complaint is dismissed with prejudice as asserted against defendants Dr. Lovell-Rose, and Good Samaritan Hospital.

Dated: May 1, 2013

HON. JOSEPH C. PASTORESSA, J.S.C.

_____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION