

**Loizos v Alpert**

2015 NY Slip Op 30454(U)

March 26, 2015

Supreme Court, Suffolk County

Docket Number: 07-6424

Judge: Joseph A. Santorelli

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

COPY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE 8-26-14  
ADJ. DATE 10-28-14  
Mot. Seq. # 005 - MG  
# 006 - MG

-----X  
SOPHIA LOIZOS and GEORGE LOIZOS,  
  
Plaintiffs,  
  
- against -  
  
SCOTT ALPERT, DAVID M. SACKNOFF and  
HUNTINGTON HOSPITAL,  
  
Defendants.  
-----X

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Upon the following papers numbered 1 to 35 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 18; 19 - 35; Notice of Cross Motion and supporting papers    ; Answering Affidavits and supporting papers    ; Replying Affidavits and supporting papers    ; Other    ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

**ORDERED** that the unopposed motion (#005) by defendant David Sacknoff, M.D., and the unopposed motion (#006) by defendant Huntington Hospital hereby are consolidated for the purposes of this determination; and it is

**ORDERED** that the unopposed motion by defendant David Sacknoff, M.D., seeking summary judgment dismissing the complaint against him is granted; and it is

**ORDERED** that the unopposed motion by defendant Huntington Hospital seeking summary judgment dismissing the complaint against it is granted.

Plaintiffs Sophia Loizos and George Loizos commenced this action against defendants Dr. Scott Alpert, Dr. David Sacknoff and Huntington Hospital to recover damages for injuries allegedly sustained by Sophia Loizos due to medical malpractice in September 2004. The complaint alleges that defendants failed to diagnose a urinary tract infection suffered by plaintiff Sophia Loizos prior to the performance of a left total knee replacement surgery conducted by Dr. Scott Alpert at Huntington Hospital on September 17, 2004. Plaintiff further alleges that due to the failure to diagnose the urinary tract infection prior to the left total knee replacement surgery, the prosthesis that was placed in her left knee by Dr. Alpert became infected, requiring her to undergo antibiotic treatment to clear the infection and two additional surgeries, one to remove the infected prosthesis and a second one to place a new prosthesis, on her left knee.

In 1986, Sophia Loizos had surgery for a torn meniscus in her left knee, which was performed by Dr. William Healy. In 2003, she was diagnosed with arthritis in both her right and left knee by Dr. Philip LeNoach, to whom she was referred by Dr. Sacknoff, her primary care physician. On April 5, 2004, Loizos presented to Dr. Alpert, a specialist in adult reconstruction orthopedics, at his private medical practice with complaints of pain in both knees, with the pain being greater in the right knee than the left knee. Dr. Alpert conducted an examination of Loizos and found various deformities in her knees, including severe swelling, limited range of motion and diffuse joint line tenderness. He also noted that Loizos had a two to three year history of pain in both knees and that the pain was becoming worse. The x-rays performed at Dr. Alpert's office revealed that Loizos had osteoarthritis of the right and left knees, and that the knees were "near bone-on-bone in the medial compartment with peripatellar arthrosis." Thereafter, Dr. Alpert discussed his findings with Loizos and recommended that she undergo total knee replacement surgery on both knees, which she agreed to following a discussion of the pros and cons of the surgery. It was determined that she would undergo knee replacement surgery on the right knee first, and that she would have the surgery performed on the left knee at a later date.

On May 6, 2004, Loizos underwent pre-surgical testing at Huntington Hospital prior to the performance of the right total knee replacement surgery, which was scheduled for May 14, 2004. She also presented to Dr. Sacknoff for a preoperative evaluation on May 12, 2004. During the pre-surgical testing, Dr. Sacknoff took Loizos' history and conducted a physical examination of her, as well as reviewed all results from the laboratory testing, including the blood work and the urinalysis, which were performed at Huntington Hospital. Dr. Sacknoff observed that the results of the urinalysis were abnormal, showing trace protein, "small blood," leukocyte esterase and bilirubin. However, Dr. Sacknoff determined that, since there was squamous epithelial cells present in the urine, but not nitrites, the abnormality was not the result of an infection; instead, it was due to contamination of the collected specimen. As a result, Dr. Sacknoff found there were no contraindications to the planned right knee replacement surgery and provided Loizos with medical clearance. Thus, on May 14, 2004, Loizos underwent right total knee replacement surgery, which was performed by Dr. Alpert, at Huntington Hospital. Following the surgery, she received physical therapy and postoperative follow-up examinations with Dr. Alpert.

In preparation for the left total knee replacement surgery, Loizos underwent pre-surgical testing at Huntington Hospital on September 10, 2004, and with Dr. Sacknoff on September 14, 2004. After reviewing Loizos' laboratory results, although her urinalysis result contained abnormal findings, Dr. Sacknoff determined there were no contraindications to the left total knee replacement surgery and provided her with medical clearance for the surgery. Dr. Sacknoff attributed the observed abnormalities in Loizos's urinalysis report to her having her menstruation at the time the sample was collected, because there was a large quantity of blood in the results of the urinalysis, and Loizos had not made any complaints consistent with a urinary tract infection. On September 17, 2004, Loizos underwent a left total knee replacement surgery performed by Dr. Alpert at Huntington Hospital. Following the surgery, Loizos was placed on perioperative antibiotics, and sterile dressing changes to the surgical area were performed to prevent infection. On September 20, 2004, Loizos was discharged from Huntington Hospital, and on September 29, 2004, she had a follow-up visit with Dr. Alpert, who noted that she was doing well following the surgery.

On November 1, 2004, during Loizos' visit with Dr. Alpert, he observed that she had "routine post operative" swelling in her left knee and that there was no wound infection. Although she was advised by Dr. Alpert to return for a follow-up visit in two month, Loizos did not return until June 2005. In May 2005, Loizos began to develop joint effusion, warmth in the left knee and pain to the "point that she was limping." On June 13, 2005, Loizos returned to Dr. Alpert's office, and after examining her and observing that there was warmth in her left knee, but no redness or erythema, Dr. Alpert aspirated and removed fluid from the knee, and sent the fluid to a laboratory for a Gram stain and culture. After receiving the results of the Gram stain and culture, which contained 13,000 white blood cells and was cloudy in appearance, Dr. Alpert concluded that there was an inflammatory process with no evidence of infection in Loizos' left knee, and he informed her that she could proceed with the emergent total abdominal hysterectomy scheduled for later in the month.

On June 16, 2005, Dr. Alpert received an additional report regarding the Gram stain, which stated there was gram-positive cocci growing in the broth medium used to cultivate the sample taken from in Loizos' left knee, and, as result, he recommended that Loizos repeat the knee aspiration after she underwent the hysterectomy. On July 20, 2005, Dr. Alpert performed another aspiration of the fluids in Loizos' left knee, because she continued to have swelling in the left knee, and sent the removed fluid, which was cloudy, to a laboratory for a cell count and a Gram stain. On July 25, 2005, Dr. Alpert contacted Loizos via telephone to inform her that the results of the aspiration of her left knee's fluid showed Staph Aureus growing again in the broth medium, and that she had an active infection in her left knee. He recommended that Loizos have the prosthesis removed, that an antibiotic spacer be placed in her left knee after the removal of the prosthesis, followed by six weeks of intravenous ("IV") antibiotics, and then implantation of a new prosthesis in her left knee. On August 2, 2005, Loizos was readmitted into Huntington Hospital for the removal of the prosthesis in her left knee and the placement of the antibiotic spacer, and she was placed on an anticoagulant. After the removal, Loizos continued to treat with Dr. Alpert, and on October 17, 2005, additional fluid was aspirated from her left knee, which results revealed that the infection had been cleared. Thereafter, she was readmitted into Huntington Hospital for the re-implantation of the prosthesis for the left total knee replacement, and on October 30, 2005, she was discharged from the hospital. Following her discharge, Loizos followed-up with Dr. Alpert on December 12, 2005, and was last seen by him on April 19, 2006, which was six months after

the re-implantation of a left knee prosthesis, and there were no complaints of swelling, redness or erythema.

Dr. Sacknoff now moves for summary judgment on the basis that he did not depart from the acceptable standard of medical care in the treatment he rendered to Loizos while performing the preoperative evaluation for the left total knee replacement surgery in September 2004, and that the care he provided did not, in any way, proximately cause the alleged injuries sustained by Loizos. Specifically, Dr. Sacknoff alleges that the bacteria which caused Loizos' infection in her left knee prosthesis was not the type of bacteria that is found in or originates from the urinary tract. In support of the motion, Dr. Sacknoff submits copies of the pleadings, unsworn copies of Loizos' medical records, the parties' deposition transcripts, and the affidavit of his expert, Dr. Eugene Heller.

To make a prima facie showing of entitlement to summary judgment in an action to recover damages for medical malpractice, a physician must establish through medical records and competent expert affidavits that the defendant did not deviate or depart from accepted medical practice in defendant's treatment of the patient and that defendant was not the proximate cause of plaintiff's injuries (*see Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 903 NYS2d 152 [2d Dept 2010]; *Deutsch v Chaglassian*, 71 AD3d 718, 896 NYS2d 431 [2d Dept 2010]; *Plato v Guneratne*, 54 AD3d 741, 863 NYS2d 726 [2d Dept 2008]; *Jones v Ricciardelli*, 40 AD3d 935, 836 NYS2d 879 [2d Dept 2007]; *Mendez v City of New York*, 295 AD2d 487, 744 NYS2d 847 [2d Dept 2002]). A physician owes a duty of reasonable care to his patients and will generally be insulated from liability where there is evidence that he conformed to the acceptable standard of care and practice (*see Spensieri v Lasky*, 94 NY2d 231, 701 NYS2d 689 [1999]; *Barrett v Hudson Valley Cardiovascular Assoc., P.C.*, 91 AD3d 691, 936 NYS2d 304 [2d Dept 2012]; *Geffner v North Shore Univ. Hosp.*, 57 AD3d 839, 871 NYS2d 617 [2d Dept 2008]). A doctor is not a guarantor of a correct diagnosis or a successful treatment, nor is a doctor liable for a mere error in judgment if he or she has considered the patient's best interest after careful evaluation (*see Nestorowich v Ricotta*, 97 NY2d 393, 740 NYS2d 668 [2002]; *Oelsner v State of New York*, 66 NY2d 636, 495 NYS2d 359 [1985]; *Bernard v Block*, 176 AD2d 843, 575 NYS2d 506 [2d Dept 1991]). Where the defendant has met that burden, a plaintiff, in opposition, must submit a physician's affidavit of merit attesting to a departure or deviation from acceptable medical practice and attesting to the fact that the departure or deviation was a competent cause of the injuries sustained by the plaintiff (*see Stukas v Streiter*, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]; *Arkin v Resnick*, 68 AD3d 692, 890 NYS2d 95 [2d Dept 2009]; *Rebozo v Wilen*, 41 AD3d 457, 838 NYS2d 121 [2d Dept 2007]; *Johnson v Queens-Long Is. Group*, 23 AD3d 525, 806 NYS2d 614 [2d Dept 2005]; *Dellacone v Dorf*, 5 AD3d 625, 774 NYS2d 776 [2d Dept 2005]; *Domaradzki v Glen Cove Ob/Gyn Assoc.*, 242 AD2d 282, 660 NYS2d 739 [2d Dept 1997]). However, general allegations of medical malpractice, merely conclusory in nature and unsupported by competent evidence establishing the essential elements of the claim, are insufficient to defeat a motion for summary judgment (*see Arkin v Resnick, supra*; *Dolan v Halpern*, 73 AD3d 1117, 902 NYS2d 585 [2d Dept 2010]; *Holbrook v United Hosp. Med. Ctr.*, 248 AD2d 358, 669 NYS2d 631 [2d Dept 1998]).

Upon review of the affirmation of his expert, Dr. Eugene Heller, and the additional exhibits submitted in support of the motion, Dr. Sacknoff has established that he did not deviate or depart from acceptable standards of medical care when he provided Loizos with medical clearance for the

performance of the left total knee replacement surgery in September 2004 (*see Stukas v Streiter*, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]; *Adjetey v New York City Health & Hosps. Corp.*, 63 AD3d 865, 881 NYS2d 472 [2d Dept 2009]; *Costello v Kirmani*, 54 AD3d 656, 863 NYS2d 262 [2d Dept 2008]; *Dandrea v Hertz*, 23 AD3d 332, 804 NYS2d 106 [2d Dept 2005]). Dr. Heller opined to a reasonable degree of medical certainty that Dr. Sacknoff did not deviate from good and accepted standards of medical care while rendering treatment to Loizos prior to her left total knee replacement surgery and that, in any event, Dr. Sacknoff's treatment of Loizos was not a proximate cause of any of the injuries allegedly sustained by her (*see Forrest v Tierney*, 91 AD3d 707, 936 NYS2d 295 [2d Dept 2012]; *Graziano v Cooling*, 79 AD3d 803, 913 NYS2d 302 [2d Dept 2010]). Dr. Heller states that Dr. Sacknoff noted in the history portion of his pre-admission clearance form that Loizos had significant osteoarthritis of the left knee; had undergone a right total knee replacement surgery in May 2004 without any complications; had a history of mild hypertension; was asymptomatic and without complaints of chest pain or shortness of breath and palpitations; and the results of the perioperative laboratory data. Dr. Sacknoff also noted that the urinalysis was "cloudy with large blood and moderate leuk esterase," that Loizos was menstruating at the time of the urinalysis, and that "assuming the electrocardiogram ("ECG") was normal, there was no contraindication to the surgery."

Dr. Heller states that, although urine should be clear and not cloudy, the presence of ketone levels in the urine sample suggested that Loizos had fasted prior to providing the urine sample and was using her body fat for nutrition, which was then broken down into ketones. Dr. Heller states that the presence of blood, which was reported as large, in Loizos' urine sample, could represent a urinary tract infection, but that such a scenario would be highly unusual, especially since the leukocytes were reported as moderate in the sample. Dr. Heller explains that the leukocyte esterase enzyme is present when white blood cells in the urine release the enzyme "leuk esterase" into the urine, and that is indicative of a urinary tract infection, as well as the presence of nitrites, which become apparent in the urine when white blood cells convert the waste nitrates into urinary nitrites. However, he states that the urinalysis results reported the nitrites level as negative in Loizos' urine sample. Dr. Heller further states that, based upon the distribution of elements in Loizos' urine sample, the results were more indicative of a contaminated specimen and not a urinary tract infection. He explains that when someone has a urinary tract infection, white blood cells and elevated levels of leukocytes and nitrites are present, and such was not the case in Loizos' urinalysis. Moreover, Dr. Heller states that when a urinary tract infection is present, red blood cells are present, but usually not gross hematuria or squamous epithelial cells, and that bacteria would be present in a culture medium, but not in cleanly delivered urine. In addition, Dr. Heller states that the most common infection of the urinary tract is due to the "coliform bacterium," and occasionally from the "Gram positive bacterium," but never from the "Gram positive staphyococcus bacteria, which is the bacteria that was found in the aspirated fluid from Loizos' left knee after the left total knee replacement surgery.

Furthermore, Dr. Heller opines that Dr. Sacknoff properly performed all preoperative tests and procedures on Loizos; that Dr. Sacknoff properly considered the results of the urinary test; that he properly cleared her for surgery, since there was no conclusive evidence that Loizos had a urinary tract infection prior to surgery; and that there was no increased risk of prosthetic joint infection as a result of the urinalysis and, thus, no reason for Dr. Sacknoff to order preoperative antibiotics for Loizos. Dr. Heller further states that the findings of Loizos' urinalysis are not consistent with a urinary tract

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infection. Instead, they were more indicative of the urine sample having been mixed with a contaminant, menstrual blood, especially since no nitrites were present in the urinalysis. Dr. Heller explains that generally, when a patient has a urinary tract infection, the patient complains of pain or urgency, urinary distress, and upon examination, suprapubic tenderness is revealed. However, Loizos made no such complaints while being examined by Dr. Sacknoff during his preoperative examination of her. As a result, explains Dr. Heller, there was no basis for canceling the left total knee replacement surgery. More importantly, the infection in Loizos' left knee prosthetic did not occur until about six months after the subject surgery and the bacteria involved, staphylococcus aureus, is not the type of bacteria that is found in the urinary tract. Therefore, Dr. Heller states that, within a reasonable degree of medical certainty, there were no deviations from good and acceptable standards of medical practice by Dr. Sacknoff during his performance of Loizos' pre-surgical medical evaluation, and that Dr. Sacknoff's actions were not a proximate cause of the injuries sustained by Loizos.

In addition, Huntington Hospital moves for summary judgment in its favor, arguing that its staff did not deviate or depart from accepted medical practice in the care and treatment that was rendered to Loizos by its staff during her admission to its facility or while performing the preoperative laboratory work for her left total knee replacement surgery in September 2004, and that it was not the proximate cause of her alleged injuries. Huntington Hospital also asserts that it cannot be held vicariously liable for the actions of Dr. Alpert or Dr. Sacknoff, who are private attending physicians. In support of the motion, Huntington Hospital submits copies of the pleadings, the parties' deposition transcripts, uncertified copies of Loizos's medical records, and the affirmation of its expert, Dr. Salvatore Scoma.

It is fundamental that the primary duty of a hospital's staff is to follow the physician's orders, and that a hospital, generally, will be protected from tort liability if its staff follows the orders (*Toth v Community Hosp. at Glen Cove*, 22 NY2d 255, 265, 292 NYS2d 440 [1968]; see *Sledziewski v Cioffi*, 137 AD2d 186, 538 NYS2d 913 [3d Dept 1988]). Moreover, "not every negligent act of a nurse [is] considered medical malpractice, but a negligent act or omission by a nurse that constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician constitutes malpractice" (*Bleiler v Bodnar*, 65 NY2d 65, 72, 489 NYS2d 885 [1985]; see *Spiegel v Goldfarb*, 66AD3d 873, 889 NYS2d 45[2d Dept 2009]). "A hospital may not be held vicariously liable for the malpractice of a private attending physician who is not an employee and may not be held concurrently liable unless its employees committed independent acts of negligence or the attending physician's orders were contraindicated by normal practice such that ordinary prudence required inquiry into the correctness of the same" (*Toth v Bloshinsky*, 39 AD3d 848, 850, 835 NYS2d 301 [2d Dept 2007]; see *Sela v Katz*, 78 AD3d 681, 911 NYS2d 112 [2d Dept 2010]; *Cerny v Williams*, 32 AD3d 881, 882 NYS2d 548 [2d Dept 2006]). However, "an exception to the general rule exists where a patient comes to the emergency room seeking treatment from the hospital and not from a particular physician of the of the patient's choosing" (*Schultz v Shreedhar*, 66 AD3d 666, 666, 886 NYS2d 484 [2d Dept 2009] quoting *Salvatore v Winthrop Univ. Med. Ctr.* 36 AD3d 887, 888, 829 NYS2d 183 [2d Dept 2007]; see *Sampson v Contillo*, 55 AD3d 588, 865 NYS2d 634 [2d Dept 2008]). Therefore, "in order to establish its entitlement to judgment as a matter of law to defeat a claim of vicarious liability, a hospital must demonstrate that the physician alleged to have committed the malpractice was an independent contractor and not a hospital employee" (*Muslim v Horizon Med. Group*, 118 AD3d 681, 683, 988 NYS2d 628 [2d Dept 2014], quoting *Alvarado v Beth Israel Med. Ctr.*, 78 AD3d 873, 875, 911 NYS2d 174 [2d

Dept 2010)), and that “the exception to the general rule [does] not apply” (*Rizzo v Staten Is. Univ. Hosp.*, 29 AD3d 668, 668-69, 815 NYS2d 162 [2d Dept 2006]).

Based upon the adduced evidence, Huntington Hospital has established, as a matter of law, that its staff’s treatment of Loizos conformed to good and acceptable medical and nursing practice (see *Hamilton v Good Samaritan Hosp.*, 73 AD3d 697, 900 NYS2d 368 [2d Dept 2010]; *Shahid v New York City Health & Hospitals Corp.*, 47 AD3d 800, 850 NYS2d 519 [2d Dept 2008]; *Mattis v Keen*, 54 AD3d 610, 864 NYS2d 6 [1st Dept 2008]), and that its treatment was not the proximate cause of the alleged injuries sustained by Loizos as a result of the pre-surgical laboratory testing performed at its facility or the left total knee replacement surgery that occurred on September 17, 2004 (see *Buckso v Gordon*, 118 AD3d 653, 987 NYS2d 402 [2d Dept 2014]; cf. *Orsi v Haralbatos*, 20 NY3d 1079, 965 NYS2d 71 [2013]). Moreover, it is undisputed that Dr. Alpert and Dr. Sacknoff were private physicians, whose services had been retained by Loizos, and that they were not employed by Huntington Hospital (see *Hill v St. Clare’s Hosp.*, 67 NY2d 72, 499 NYS2d 904 [1986]; *Gardner v Brookdale Hosp. Med. Ctr.*, 73 AD3d 1124, 901 NYS2d 680 [2d Dept 2010]; *Bevelacqua v Yonkers Gen. Hosp.*, 10 AD3d 668, 781 NYS2d 747 [2d Dept 2004]). Thus, Huntington Hospital also has demonstrated that its staff followed the orders of Dr. Alpert, that Dr. Alpert’s orders were not contraindicated by normal practice, and that its staff did not commit any independent acts of negligence (see *Schultz v Shreedhar*, , 66 AD3d 666, 886 NYS2d 484 [2d Dept 2009]; *Martinez v La Porta*, 50 AD3d 976, 857 NYS2d 194 [2d Dept 2008]; *Cook v Reisner*, 295 AD2d 466, 744 NYS2d 426 [2d Dept 2002]).

Further, in his affirmation, Dr. Salvatore Scoma, a physician specializing in internal medicine and infectious diseases, states, within a reasonable degree of medical certainty, that Loizos’ left total knee replacement surgery on September 17, 2004 was not the cause of the infection diagnosed in July 2005, since the staph aureus bacillus species is not a likely urinary pathogen that would affect a knee replacement, that Loizos received perioperative and postoperative antibiotics, and based upon the timing of Loizos’ complaints. Dr. Scoma states that, following the left total knee replacement surgery, Loizos was “doing good” until May 2005, when she developed “warmth with recurrent effusion and pain in the [left] knee, which caused her to walk with a limp.” Dr. Scoma states that at the same time Loizos developed the onset of effusion in her left knee, a change in the sedimentation rate and C-reactive protein in Loizos’ blood work also occurred, which suggests that the infection was an acute event and not related to the left total knee replacement surgery performed in September 2004. Moreover, Dr. Scoma explains that the time period between the pre-surgical testing for the left total knee replacement surgery and Loizos’ development of an infection in the left knee prosthesis is too attenuated to have been caused by any laboratory work performed by Huntington Hospital. Instead, Dr. Scoma states that, although Ms. Loizos may have developed some swelling prior to June 15, 2005, the infection was more than likely caused by a transient bacteremia during the total abdominal hysterectomy procedure in late June 2005, since it is an invasive procedure, requiring IV lines, and provides for multiple points of access for an infection to enter a patient’s system.

Furthermore, Dr. Scoma states that, while Huntington Hospital may have conducted the perioperative testing on Loizos, the results of all laboratory work was provided to Loizos’ primary care physician, Dr. Sacknoff, who provided clearance for the surgery, and that, based on the results of the laboratory work, there was no reason to cancel the left total knee replacement surgery scheduled for

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September 17, 2004. Dr. Scoma states that Huntington Hospital's obligation was not to interpret the results of Loizos' pre-surgical tests, but to provide the results to Dr. Sacknoff, with the expectation that he would review the test results and make the necessary determinations regarding whether it was clear to proceed with the surgery, which is what occurred in this instance. In addition, Dr. Scoma opined that the role of the nursing staff at Huntington Hospital in regards to Loizos' preoperative testing was to ensure that all of the appropriate testing had been performed and that all appropriate paperwork and clearances were contained in Loizos' chart, not to assess the test results or to determine whether the surgery should be canceled.

Finally, Dr. Alpert and Dr. Sacknoff each testified at their examinations before trial that they have their own private practices, that Loizos was their private patient prior to her bilateral knee replacement surgeries, and that they have privileges at Huntington Hospital, but are not employed by the hospital.

In opposition to Dr. Sacknoff and Huntington Hospital's prima facie showings, plaintiff has failed to raise a triable issue of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Goler v Sonsky*, 115 AD3d 644, 981 NYS2d 558 [2d Dept 2014]). Plaintiff has not submitted any evidence in opposition to the instant motions. Accordingly, the motions by Dr. Sacknoff and Huntington Hospital for summary judgment dismissing the complaint as against them are granted. The action is severed and continued as against Dr. Alpert only.

Dated: **MAR 26 2015**

  
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HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION