

<b>Singh v Jamaica Hosp.</b>
2015 NY Slip Op 32959(U)
January 8, 2015
Supreme Court, Queens County
Docket Number: 700680/12
Judge: Peter J. O'Donoghue
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**ORIGINAL**

New YORK SUPREME COURT - QUEENS COUNTY  
Present: Honorable, PETER J. O'DONOGHUE IAS PART MD  
Justice

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Doodnauth Singh and Mitchell Singh,

Index No.:700680/12

Plaintiffs,  
-against-

Motion Date:9/10/14

The Jamaica Hospital d/b/a Jamaica  
Hospital Medical Center, et. al.,

Motion Seq.:5 & **FILED**

Defendants.  
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JAN 12 2015

COUNTY CLERK  
QUEENS COUNTY

Motions by defendants Maria Cipollone, M.D. and Jamaica Hospital Medical Center bearing sequence numbers 5 and 6 of 9/10/14 are hereby consolidated for disposition. The following papers numbered 105-115; 116-122; 136-138;123-135;165-169 read on these motions by defendants for Orders pursuant to CPLR 3101 and 3126, precluding plaintiffs from offering at trial any evidence and testimony as to any claimed medical departures, causation, injuries, or damages or in the alternative, pursuant to CPLR 3101 and 3126, striking those portions of plaintiffs' Expert Witness Responses that allege malpractice outside of the allegations set forth in the pleadings or Bill of Particulars and directing plaintiffs to serve upon defendants an Amended Expert Witness Response that cures the deficiencies and omit all improper language within five (5) days of the date of service of this Court's Order with Notice of Entry, and upon plaintiffs' failure to comply precluding plaintiffs from offering at trial any evidence or testimony as to any claimed medical departures, causation, injuries or damages.

PAPERS  
NUMBERED

Seq. No. 5

N.M.-Affidavits-Exhibits.....	105-115
Answering Papers-Affidavits-Exhibits.....	116-122
Reply Affirmation-Exhibits.....	136-138

Seq. No. 6

N.M.-Affidavits-Exhibits.....	123-135
Answering Papers-Affidavits-Exhibits.....	165-169

Upon the foregoing papers it is ordered that these motions

by defendants Maria Cipollone, M.D. and Jamaica Hospital Medical Center for Orders pursuant to CPLR 3101 and 3126, precluding plaintiffs from offering at trial any evidence and testimony as to any claimed medical departures, causation, injuries, or damages or in the alternative, pursuant to CPLR 3101 and 3126, striking those portions of plaintiffs' Expert Witness Responses that allege malpractice outside of the allegations set forth in the pleadings or Bill of Particulars and directing plaintiffs to serve upon defendants an Amended Expert Witness Response that cures the deficiencies and omit all improper language within five (5) days of the date of service of this Court's Order with Notice of Entry, and upon plaintiffs' failure to comply precluding plaintiffs from offering at trial any evidence or testimony as to any claimed medical departures, causation, injuries or damages are denied to the extent set forth below:

Moving defendant Dr. Cipollone objects to the following language contained in plaintiffs' Expert Notice Pursuant to CPLR 3101(d):

"Defendant failed to properly advise Jamaica Hospital staff on 11/16/2009 and on 11/17/2009 as to the importance of substantial elevation and use of ice packs for the right arm and hand, and as to appropriate monitoring for compartment syndrome in light of the patient's impaired cognitive state and limited ability, or inability, to accurately perceive and report early symptoms such as pain and anesthesia." (Exh. E annexed to Cipollone moving papers).

Paragraph 8 of plaintiffs' Bill of Particulars (Exh. D annexed to Cipollone moving papers) contains the following allegations of medical malpractice asserted against Dr. Cipollone which support the language contained in plaintiffs' CPLR 3101(d) exchange:

"Defendant failed to take proper heed and cognizance of the increasing severity of plaintiff's right upper extremity swelling and discoloration over a period of days in the hospital together with the other factors of plaintiff's condition known, and failed to appreciate the elevated risk of compartment syndrome, in causing permitting and failing to prevent the worsening of the plaintiff's condition."

Moving defendant Jamaica Hospital Center objects to the following language contained in plaintiffs' Expert Notice pursuant to CPLR 3101(d):

"(1) Failing to immediately and consistently place the right

are and hand in a substantially elevated position and to apply ice to the limb;

(2) Failing to timely and promptly obtain surgical consultation by a qualified experienced surgeon on the morning of November 15, 2009 and continued thereafter;

(3) failing to publish and implement for its staff, guidelines and protocols for prompt obtaining of a surgical consultation for a patient at risk for compartment syndrome such as the plaintiff following the IV infiltration/extravasation; guidelines and protocols for the proper care and treatment of a patient and to rule out compartment syndrome in a patient with impaired cognitive state and limited ability, or inability, to accurately perceive and report early symptoms such as pain and anesthesia." (Exh. H annexed to Jamaica Hospital's moving papers.)

Paragraph 1 of plaintiffs' Bill of Particulars (Exh. D annexed to Jamaica Hospital's moving papers) contains the following allegations of medical malpractice asserted against Jamaica Hospital which support the language as set forth in items 1 and 2 above:

--"failed to timely intervene to relieve the internal pressure of the developing compartment syndrome before it caused permanent damage;"

--"Defendant's staff failed to take proper heed and cognizance of the increasing severity of plaintiff's right upper extremity swelling and discoloration over a period of days in the hospital together with the other factors of plaintiff's condition known to them;"

--"failed to timely and promptly perform surgical intervention;"


--"in causing, permitting and failing to prevent the worsening of the plaintiff's condition;"

However, the language set forth in item 3 above is stricken in light of the fact that these allegations are not contained in the Complaint and/or the Bills of Particulars.

The branch of Jamaica Hospital's motion for an Order compelling plaintiffs to provide the following additional expert information, specifically (a) dates and areas of specialty of all internships, residencies and/or fellowships; (b) board

certification and dates he/she became board certified and  
( c ) all current hospital affiliations is granted. Plaintiffs'  
shall provide this information to defendants within 30 days of  
service of a copy of the within Order with Notice of Entry.

Dated: January 8, 2015

  
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Hon. Peter J. O'Donoghue, J.S.C.

