Miller v Ford
2018 NY Slip Op 30370(U)
February 26, 2018
Supreme Court, New York County
Docket Number: 805263/14
Judge: Martin Shulman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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GRACE MILLER, individually and as Executrix of the Estate of ROBERT MILLER, and as natural guardian of the infant children,
Plaintiff,

Index No. 805263/14

Decision & Order

-against-

Motion Seq. 005

MICHAEL E. FORD, M.D., NEW YORK-PRESBYTERIAN HOSPITAL/WEILL CORNELL MEDICAL CENTER, JOHN DOES 1-10,
Defendants.
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Martin Shulman, J.:

In this action alleging medical malpractice and wrongful death, defendants Michael E. Ford, M.D. (Dr. Ford) and The New York and Presbyterian Hospital s/h/a New York-Presbyterian/Weill Cornell Medical Center (NYPH), move pursuant to CPLR 3212 for summary judgment dismissing the complaint and upon granting such relief, inter alia, amending the caption herein to delete defendants' names. Plaintiff Grace Miller, individually and as Executrix of the Estate of Robert Miller, and as natural guardian of the infant children (Mrs. Miller or plaintiff) opposes the motion.

The complaint alleges that defendants failed to timely and properly diagnose plaintiff's late husband, Robert Miller's (Mr. Miller or decedent), metastatic melanoma. As a result thereof, plaintiff alleges that Mr. Miller sustained a right hip disarticulation, amputation and death.

Factual Background

Plaintiff's decedent, then 46 years old, first presented to Dr. Ford, an internal medicine physician, on February 1, 2012 for a routine physical

examination and to establish care with a primary physician. The medical records reflect that he advised Dr. Ford that in 2008 he was diagnosed with malignant melanoma on his right calf, which was surgically removed.[1] At that time he was instructed to follow up with his dermatologist every six months for complete body examinations (CBE).[2]

At this first visit with Dr. Ford, Mr. Miller complained of a lump in his right groin which he stated first appeared approximately three days prior. He indicated it appeared after recent strenuous exercise and had gotten smaller since he discovered it. Dr. Ford noted that the lump was a possible femoral hernia which exercise may have caused or a cyst. The records indicate that he recommended that Mr. Miller have a pelvic CT scan. A "Quick Note" contained in the records documents Dr. Ford's contemporaneous telephone call to Mr. Miller only two days later, wherein Dr. Ford reminded him to schedule the pelvic CT and abstain from exercise until the mass was diagnosed. That same day, the records indicate that Dr. Ford sent Mr. Miller a letter advising that his laboratory results were mostly normal and again reminded him to have the CT scan. Mrs. Miller

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[1] Dr. Ford's notes from the February 1, 2012 visit actually state that Mr. Miller had "a right calf pigmented lesion resected at MSKCC (Memorial Sloan Kettering Cancer Center) in 2007 with indeterminate pathology." However, both plaintiff and defendants and their experts refer to the lesion as a malignant melanoma.

[2] Defendants characterize Mr. Miller as being "less than compliant" with this instruction, having presented for CBEs with his dermatologist, Dr. Teresa Notari, only five times from July 2008 through July 2011. Parenthetically, Dr. Notari was named as a defendant in an action plaintiff commenced in New Jersey, which has been settled.

disputes that Dr. Ford recommended a CT scan and that Mr. Miller received a prescription for it, and similarly disputes that Dr. Ford followed up with her husband by telephone and letter.

Mr. Miller next presented to Dr. Ford on October 24, 2012, approximately nine months after his initial visit. The records note that he had not scheduled the pelvic CT scan and the right groin mass had enlarged and was tender. Dr. Ford urged Mr. Miller to undergo radiologic testing within the next two weeks. On October 26, 2012 Dr. Ford consulted with a radiologist who recommended an MRI. The MRI and a CT scan were ordered that day. The MRI was performed on November 9, 2012 and the radiologist noted that the mass likely represented a massively enlarged lymph node. The findings were suggestive of lymphoma or leukemia. Ultimately, however, pathology results from a November 21, 2012 incisional biopsy revealed metastatic melanoma. Unfortunately, despite having pursued further treatment options at Memorial Sloan Kettering Cancer Center and later at New York University Langone Medical Center (NYU), and after having endured amputation of his right leg and disarticulation of his right hip, Mr. Miller succumbed to the disease on March 10, 2014.

EXPERTS' CONTENTIONS

In support of their motion for summary judgment dismissing the complaint, defendants argue that they did not depart from accepted medical standards in treating Mr. Miller and any alleged action or inaction on their parts did not proximately cause his alleged injuries. They submit expert affirmations from Julia H. Arnsten, M.D. (Dr. Arnsten), who has been board certified in internal medicine

since 1994, and Myron Arlen, M.D. (Dr. Arlen), who has been board certified in surgery since 1963 and practices in the field of surgical oncology (Motion at Exhs. A, B).

Dr. Arnsten

Dr. Arnsten opines within a reasonable degree of medical certainty that based upon the symptoms Mr. Miller described to Dr. Ford on his first visit, a differential diagnosis would include a hernia. Recurrent metastatic melanoma would not be high on a differential diagnosis since Mr. Miller advised that the lump developed after exercise and had gotten smaller. She indicates that such symptoms are typical of a hernia and atypical of metastatic melanoma and concludes that, in retrospect, the lump was an enlarged lymph node secondary to metastatic melanoma. Dr. Arnsten states that Dr. Ford appropriately and timely ordered a pelvic CT scan to positively diagnose the lump, as evidenced by his records of that date containing a requisition form for a CT scan of the pelvis which was precertified by Mr. Miller's insurer (Korn Reply Aff., Exh. A). The court notes that Dr. Ford's deposition testimony substantiates the foregoing and that he advised Mr. Miller to obtain the test.

Dr. Arnsten also avers that the standard of care does not require routine follow-up telephone calls and reminders to patients to obtain recommended laboratory work or radiology studies. However, she finds that Dr. Ford exceeded the standard of care by reminding Mr. Miller during a documented telephone call and in a letter two days later to schedule the pelvic CT scan. Dr. Arnsten notes Mr. Miller's level of education and profession and concludes that nothing would

suggest that he did not understand or would not follow Dr. Ford's instructions.[3] The letter, which references the telephone call, was not received because Mr. Miller did not correct his address on the registration form given to him at his initial visit.[4] As to NYPH, Dr. Arnsten concludes that the medical records do not support a finding of direct or vicarious liability.

Dr. Arlen

As to proximate cause, Dr. Arlen opines that any delay in diagnosing Mr. Miller's metastatic melanoma in the lymph nodes of the right groin from February 1, 2012 to November 9, 2012 did not cause or change his symptoms, injuries, prognosis, plan of treatment or outcome. In this case, the metastases to Mr. Miller's liver, bones, lungs and brain originated from his primary calf melanoma which was excised in 2008. Accordingly, an earlier diagnosis and treatment of his nodal metastases would not have prevented metastasis to the liver, bones, lungs and brain.

To a reasonable degree of medical certainty, Dr. Arlen concludes that since the lump had developed prior to the initial visit to Dr. Ford, the melanoma had already metastasized to the lymph nodes in the groin. Earlier treatment would not have resulted in a better outcome since evidence of tumor cells in a

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[3] Mr. Miller, a successful architect, attended the University of Virginia and obtained a master's degree in architecture from Princeton University.

[4] Mr. Miller had not lived at the address where the letter was sent in over 20 years. This address was automatically generated onto the registration form Mr. Miller filled out at his first visit to Dr. Ford from an electronic medical record program. Mr. Miller hand wrote his then current work and cellular telephone numbers directly below the address without correcting it.

lymph node is one of the best indicators that melanoma has already spread. In addition, Mr. Miller tested positive for a genetic mutation which accelerates tumor growth and the spread of cancer cells.

Dr. Arlen notes that in the New Jersey action plaintiff commenced against dermatologist Dr. Notari, plaintiff's expert claimed that earlier diagnosis would have allowed Mr. Miller to participate in clinical trials for which he no longer qualified as of his November 2012 diagnosis. Dr. Arlen states that it is too speculative to conclude that if Mr. Miller participated in a clinical trial immediately after first presenting to Dr. Ford that his prognosis would have been different. Such a conclusion rests upon the assumptions that he would have qualified for the trial in 2012, would have been accepted to the trial in 2012, would have had a durable response[5] to the treatment and also would not have been given a placebo.

Further, given the visible metastasis to Mr. Miller's liver and bones as of December 2012, Dr. Arlen states that the metastatic process had already started prior to February 1, 2012 and the disease likely had progressed to stage IV as of that date. Thus, for him to have had any chance of a cure or better outcome, treatment would need to have begun prior to his first visit to Dr. Ford.

In opposition, Mrs. Miller submits affidavits from Mark G. Graham, M.D., FACP (Dr. Graham), who is board certified in internal medicine, and Anna

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[5] In cancer care, a durable response is defined as "a long-lasting positive reaction to tumor therapy, usually lasting at least a year." https://medical-dictionary.thefreedictionary.com/durable+response.

Pavlick, BSN, MS, D.O., MBA (Dr. Pavlick), who is also board certified in internal medicine with a subspecialty in medical oncology (Kohn Aff. in Opp., Exhs. A, B).

Dr. Graham

Dr. Graham avers within a reasonable degree of medical certainty that the defendants' following actions and/or non-actions deviated from the applicable standards of good and accepted medical practice:

- the records do not indicate that Dr. Ford provided Mr. Miller a prescription for a CT scan;[6]
- in the event Dr. Ford did order the CT scan, he failed to: (1) do a differential diagnosis to rule out cancer[7]; (2) appreciate Mr. Miller's prior history of melanoma; (3) advise the decedent that he was at risk for cancer; (4) appreciate that the CT scan was necessary to diagnose or rule out cancer; and (5) appreciate that testing was time sensitive in order to prevent the spread of any potential cancer;[8]
- the standard of care required Dr. Ford to follow up when the CT scan was not performed in 14 days and to contact Mr. Miller within 30 days to ensure it had been completed;[9] and

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[6] Mrs. Miller denies that Dr. Ford advised the decedent to obtain a pelvic CT scan at the February 1, 2012 office visit and further denies that Mr. Miller received the required prescription to have it performed.

[7] Dr. Ford testified that his differential diagnosis included recurrent melanoma but it was low on his list.

[8] In reply, defendants note that allegations that they failed to do a differential diagnosis and to appreciate that testing was time sensitive are new theories of liability raised improperly for the first time.

[9] Dr. Graham cites AMA Code of Ethics Opinion 10.02 pertaining to patient responsibilities, which inter alia provides that patients can only be expected to comply with their physicians' recommendations when it is clearly articulated that further studies are imperative. In this regard, Dr. Graham concludes that Dr. Ford was deficient.

- the foregoing alleged deviations resulted in a delayed diagnosis of the decedent's metastatic melanoma, decreased his quality of life and ultimately caused his death.

Dr. Pavlick

With respect to proximate causation, Dr. Pavlick, who treated Mr. Miller beginning in July 2013 and oversees all clinical research trials conducted at NYU's cancer center, offers the following opinions:

- the delay in diagnosis from February 2012 allowed Mr. Miller's groin tumor to grow, spread and advance to significantly less treatable stage IV cancer, resulting in lost opportunities to participate in earlier therapies where chances for a favorable outcome would have been substantially increased;

- nothing in the medical records indicates that Mr. Miller's 2008 melanoma had spread to his lymph nodes and he was cancer free after it was removed;

- in February 2012 Mr. Miller would have been eligible for certain clinical trials or other immunotherapy trials which would have significantly impacted his prognosis;[10]

- Dr. Arlen's conclusion that Mr. Miller had stage IV melanoma when he first presented to Dr. Ford is based only on the fact that the cancer had metastasized to the liver and bones in December 2012; however, having presented with a palpable groin lump he would have been stage III as of February 2012 and would have had a fifty percent chance of achieving a durable response; and

- the decedent's BRAF mutation had no impact on his survival rate, as studies show that patients who have such mutations and those who do not respond to immunotherapy in the same manner.

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[10] Contrary to Dr. Arlen's averments, Dr. Pavlick clarifies that, for ethical reasons, patients with metastatic disease would not be offered placebos during clinical trials.

DISCUSSION

An award of summary judgment is appropriate when no issues of fact exist. *See* CPLR 3212(b); *Sun Yau Ko v Lincoln Sav. Bank*, 99 AD2d 943 (1st Dept), *aff'd* 62 NY2d 938 (1984); *Andrea v Pomeroy*, 35 NY2d 361 (1974). In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any material issues of fact. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). Indeed, the moving party has the burden to present evidentiary facts to establish his cause sufficiently to entitle him to judgment as a matter of law. *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065 (1979).

In deciding the motion, the court views the evidence in the light most favorable to the nonmoving party and gives him the benefit of all reasonable inferences that can be drawn from the evidence. *See Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 (1985). Moreover, the court should not pass on issues of credibility. *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989). While the moving party has the initial burden of proving entitlement to summary judgment (*Winegrad, supra*), once such proof has been offered, in order to defend the summary judgment motion, the opposing party 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, 562 (1980); *Freedman v Chemical Constr. Corp.*, 43 NY2d 260 (1977); see also, *Friends of Animals, Inc.*, *supra*.

1. Medical Malpractice

"To sustain a cause of action for medical malpractice, a plaintiff must prove two essential elements: (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury." *Frye v Montefiore Med. Ctr.*, 70 AD3d 15, 24 (1st Dept 2009) (citation omitted). A defendant physician seeking summary judgment must make a prima facie showing establishing the absence of a triable issue of fact as to the alleged departure from accepted standards of medical practice (*id*).

In opposition, "a plaintiff must produce expert testimony regarding specific acts of malpractice, and not just testimony that alleges '[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice'." *Id.*, citing *Alvarez v Prospect Hosp.*, 68 NY2d at 325. "In most instances, the opinion of a qualified expert that the plaintiff's injuries resulted from a deviation from relevant industry or medical standards is sufficient to preclude a grant of summary judgment in a defendant's favor (citation omitted)." *Id.* However, where an expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, the opinion should be given no probative force and is insufficient to withstand summary judgment. *Id.*, citing *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 (2002).

In this case, the record reveals that both of plaintiff's experts and both of defendants' experts have extensive experience in the specialties of internal medicine and/or oncology. Additionally, both sets of experts base their opinions

on their review of Mr. Miller's medical records as well as the pleadings and deposition transcripts herein. Therefore, it appears that all of the parties' experts are qualified to offer their opinions. *See Frye v Montefiore Med. Ctr.*, 70 AD3d at 24-25; *Guzman v 4030 Bronx Blvd. Assoc. L.L.C.*, 54 AD3d 42, 49 (1st Dept 2008) ("whether a witness is qualified to give expert testimony is entrusted to the sound discretion of the trial court . . .").

Plaintiffs do not argue that defendants fail to meet their burden on a motion for summary judgment. Rather, they point to multiple conflicts between the parties' experts' opinions (summarized above) and contend that the following issues of fact preclude granting summary judgment: (1) whether or not Dr. Ford ordered necessary diagnostic testing; (2) if he ordered testing, whether or not Dr. Ford followed up to see if Mr. Miller had the CT scan performed and whether his follow-up procedures (or lack thereof) comported with the applicable standard of care; and (3) whether defendants' alleged negligence proximately caused Mr. Miller's injuries.

A. Did Dr. Ford Order Diagnostic Testing?

While it seemingly appears that a factual dispute exists regarding whether or not Dr. Ford advised Mr. Miller to obtain a CT scan and gave him a prescription for it, the "issue" is feigned. Dr. Ford testified that he ordered a pelvic CT scan and that it is his office's practice to give patients the necessary paperwork for testing when they check out. In response, plaintiff offers only her own deposition testimony. Though adamant, she essentially testifies that Mr. Miller was one to follow doctor's orders and therefore would have had the test

done if it had been prescribed. Such testimony is based only upon Mrs. Miller's belief and speculation as to what her husband would have done and is insufficient to refute Dr. Ford's testimony and the order requisition for a pelvic CT scan.[11] Accordingly, no factual issue is raised.

B. Was Dr. Ford's Follow-Up With Mr. Miller Sufficient?

Plaintiff also argues that Dr. Ford deviated from the standard of care in failing to follow up with Mr. Miller to ensure the CT scan was performed. On defendants' behalf, internal medicine physician Dr. Arnsten states that the standard of care does not require routine follow-up telephone calls and reminders to patients to obtain recommended laboratory work or radiology studies. She nonetheless concludes that Dr. Ford exceeded the standard of care by reminding Mr. Miller on February 3, 2012 via a contemporaneously charted telephone call, as well as by letter, to schedule the pelvic CT scan.

Contrarily, plaintiff's internal medicine expert, Dr. Graham, opines that the standard of care required Dr. Ford to follow up when the CT scan was not performed in 14 days and to contact Mr. Miller within 30 days to ensure it had been completed. As previously stated, he cites AMA Code of Ethics Opinion

[11] The records indicate that Dr. Ford spoke to Mrs. Miller on November 15, 2012 regarding the CT scan ordered in February 2012 and he testified that he recalled her telling him "she was upset that he had never gone for it." Although the foregoing is not specifically noted in the chart, Dr. Ford elaborated that "[i]t just stands out in my mind, because she was . . . rightfully, very concerned about what we learned on the MRI, and she was upset and she was upset, in part, at him." When asked if Mrs. Miller "affirmatively said to you, I know you ordered a CAT scan, and he didn't go for it", Dr. Ford responded in the affirmative (Motion at Exh. I, pp 83-86).

10.02 pertaining to patient responsibilities, which he claims "states that the physician-patient partnership is characterized by an imbalance of power and separate and distinct responsibilities." Graham Aff., ¶38.

Defendants contend that plaintiff's alternative argument (to wit, Dr. Ford failed to order a CT scan, but if he did, he failed to properly follow up) is insufficient to defeat summary judgment as it demonstrates plaintiff's expert's inability to identify and opine within a reasonable degree of medical certainty as to the proximate cause of the decedent's alleged injury. Defendants also argue, and this court agrees, that Dr. Graham fails to explain the reasons for his assertions that the applicable standard of care required Dr. Ford to follow up when testing was not performed within 14 days. The records and Dr. Ford's testimony indicate that he followed up with Mr. Miller. Plaintiff's testimony, again based on speculation and belief, is insufficient to refute the foregoing. Accordingly, no issue of fact is raised.

C. Did Dr. Ford's Treatment Proximately Cause Decedent's Injuries?

As more fully summarized above, on defendants' behalf, Dr. Arnsten opines within a reasonable degree of medical certainty that the symptoms Mr. Miller presented with were consistent with a hernia rather than recurrent metastatic melanoma. Notably, plaintiff's experts do not refute, or even address this opinion. Nor do they dispute Dr. Arnsten's conclusion that, in retrospect, the lump was an enlarged lymph node secondary to metastatic melanoma.

Dr. Arlen opines that an earlier diagnosis and treatment of Mr. Miller's metastasis to the right groin lymph nodes would not have prevented metastasis

to the liver, bones, lungs and brain, which originated from the primary calf melanoma excised in 2008. He explains that since the lump had developed prior to the initial visit to Dr. Ford, the melanoma had already metastasized to the right groin lymph nodes and, given the metastasis to the liver and bones as of December 2012, the metastatic process began prior to February 1, 2012. Accordingly, Dr. Arlen concludes that any delay in diagnosis from February 1, 2012 to November 9, 2012 did not cause or change the decedent's symptoms, injuries, prognosis, plan of treatment or outcome, and therefore did not proximately cause his injuries.

On plaintiff's behalf, Dr. Pavlick disagrees with Dr. Arlen, stating that the delay in diagnosis resulted in lost opportunities to participate in earlier therapies and clinical trials, thus decreasing Mr. Miller's chances for a favorable outcome. She disagrees with Dr. Arlen's assessment that the decedent first presented to Dr. Ford with stage IV metastatic melanoma, indicating that the palpable groin lump he had would have been stage III at that time and he would have had a fifty percent chance of achieving a durable response.

While their opinions clearly differ, plaintiff's expert, unlike defendants' expert, largely fails to provide support for her opinions. For example, with respect to other therapies and participation in clinical trials, Dr. Pavlick does not establish with any certainty that Mr. Miller would have a durable response to such treatments and/or trials had he been diagnosed earlier. As defendants note, Dr. Pavlick does not opine that the standard of care when treating metastatic melanoma requires participation in clinical trials. While she states that Mr. Miller

would have qualified for certain trials she does not opine as to survivorship or point to any scientific data to show he would have had a more favorable outcome if he participated in trials or received other treatments earlier.

Summary judgment is appropriate where the nonmovant's opposition to the motion is entirely conjectural and there is no genuine issue of fact to be resolved. *See, Shaw v Time-Life Records,* 38 NY2d 201, 207 (1975). Defendants' experts emphasize, and plaintiff's experts fail to refute, that the symptoms Mr. Miller described to Dr. Ford regarding his right groin mass on February 1, 2012 did not support a diagnosis of metastatic melanoma. As such, Dr. Ford's plan for treatment was within the applicable standard of care. For the foregoing reasons, Dr. Pavlick's conclusory and speculative affidavit fails to raise any questions of fact as to whether defendants departed from accepted medical practice and the cause of action alleging medical malpractice must be dismissed.

2. Wrongful Death

As held in *Chong v New York City Trans. Auth.*, 83 AD2d 546, 547 (2d Dept 1981):

> The elements of a cause of action to recover damages for wrongful death are (1) the death of a human being, (2) the wrongful act, neglect or default of the defendant by which the decedent's death was caused, (3) the survival of distributees who suffered pecuniary loss by reason of the death of decedent and (4) the appointment of a personal representative of the decedent (citation omitted).

Having concluded plaintiff failed to establish that defendants departed from the applicable standard of care, she cannot establish that any "wrongful act,

neglect or default" caused her husband's death. Accordingly, the cause of action alleging wrongful death must be dismissed.

3. Claims as to NYPH

NYPH argues that the record does not support a finding of direct liability. This court agrees. Plaintiff does not assert any claims against NYPH that are not also claims against Dr. Ford, nor does she make any specific allegations of negligence against any NYPH employee.

In opposition, Mrs. Miller does not address NYPH's arguments as to its direct liability. Rather, plaintiff argues that NYPH is vicariously liable as Dr. Ford's employer. While plaintiff asserts that Dr. Ford has been employed by NYPH since 2011, he actually testified that he was employed by non-party Weill Cornell Medical College. Nothing in the record refutes Dr. Ford's employment status and as such, NYPH cannot be held vicariously liable.[12]

4. Derivative Claim

Finally, the cause of action alleging loss of consortium, services and society must be dismissed as it is derivative in nature and dismissal of the primary causes of action necessitates its dismissal. *Holmes v City of New Rochelle*, 190 AD2d 713, 714 (2d Dept 1993), citing *Maddox v City of New York*, 108 AD2d 42 (2d Dept), *affd* 66 NY2d 270 (1985). Accordingly, it is

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[12] Parenthetically, NYPH argues that plaintiff is precluded from asserting vicarious liability because her bill of particulars states that no such claim was being asserted (see Motion, Exh. E, ¶ 3). The court notes, however, the paragraph 25 of the complaint alleges vicarious liability.

ORDERED that defendants' motion for summary judgment dismissing the complaint is granted and the Clerk is directed to enter judgment in favor of all defendants dismissing this action with prejudice, together with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the caption in the above action is hereby amended to delete both defendants' names in accordance with the dismissal of this action, and to substitute as defendants "John Doe, M.D." and "XYZ Hospital"; and it is further

ORDERED that all papers, pleadings and proceedings in the above entitled action be deemed amended accordingly, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that defendants' counsel is directed to serve a copy of this order by e-mail upon the Clerk of the Court (cc-nyef@ nycourts.gov), and upon the Trial Support Office (trialsupport-nyef@nycourts.gov), who are directed to amend their records to reflect such change in the caption herein.

The foregoing constitutes this court's Decision and Order.

Dated: New York, New York
February 26, 2018

HON. MARTIN SHULMAN, J.S.C