Rowden v NYU Langone Med. Ctr.

2020 NY Slip Op 31703(U)

May 1, 2020

Supreme Court, New York County

Docket Number: 805474/2016

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER **PART 6**
Justice

TERRY ROWDEN,

INDEX NO. 805474/2016

Plaintiff,

MOTION DATE

MOTION SEQ. NO. 2

- against -

MOTION CAL. NO.

NYU LANGONE MEDICAL CENTER, NYU LANGONE HEALTH SYSTEM, RUSK INSTITUTE OF REHABILATATIVE MEDICINE, BRIAN IM, M.D., CAROLINA BENJAMIN, M.D., CHRESTINE DIZON UAL, R.N. and MS. MEDFORD, R.N.,

Defendants.

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits ____________________________________

Replying Affidavits

Cross-Motion: Yes X No

Defendants NYU Hospitals Center s/h/a NYU Langone Medical Center, NYU Langone Health System, Rusk Institute for Rehabilitation at NYU Hospital for Joint Diseases s/h/a Rusk Institute of Rehabilitative Medicine ("Rusk"), Brian Im, M.D. ("Dr. Im"), and Chrestine Dizon Ual, R.N. ("Nurse Ual") (collectively, "Defendants") move pursuant to CPLR § 3212 for an Order granting summary judgment dismissing Plaintiff Terry Rowden's ("Dr. Rowden[1]" or "Plaintiff") Summons and Verified Complaint.

Additionally, Defendants seeks the Court to preclude the expected trial testimony of Dr. Rowden's medical expert because the theory of liability does not reflect an opinion generally accepted within the field of medicine, and in the alternative, Defendants request a Frye hearing to determine the admissibility of any anticipated testimony regarding Dr. Rowden's expert's theory of liability.

[1] Dr. Rowden has his PhD and was an English Professor.

Background

This action, sounding in negligence and medical malpractice, arises out of Defendants alleged failure to "take adequate precautions for the plaintiff's safety and to prevent the plaintiff's falls; properly educate the plaintiff regarding safety and fall risks; appropriately utilize bed side rails, minimal restraints, call bells and a helmet; appreciate the increased risk for bleeding due to the plaintiff's anticoagulation therapy; and by otherwise failing to properly and timely examine, treat and diagnose the plaintiff." Dr. Rowden alleges Defendants' negligence and medical malpractice resulted in Dr. Rowden's fall on October 19, 2014.

On September 18, 2014, Dr. Rowden suffered a right hemorrhagic stroke and on September 19, 2014, Dr. Rowden underwent a craniotomy at Mt. Sinai Hospital. Dr. Rowden's treatment at Mt. Sinai Hospital included treatment with anticoagulants and the insertion of an IVC filer after complications with a pulmonary embolism ("PE") and deep vein thrombosis ("DVT"). The medical records indicate that Dr. Rowden's neurological recovery was good and at discharge, his main deficits were residual left hemiplegia (partial paralysis) and severe dysarthria (slurred speech).

On October 13, 2014, Dr. Rowden was transferred to Rusk for acute rehabilitation. On October 13, 2014, Dr. Rowden was examined by Jaime Levine, M.D. ("Dr. Levine") of Rehabilitation for Rehab Medicine Admission History and Physical at NYU Langone Hospital. Dr. Levine performed a physical examination on Dr. Rowden and reported that Dr. Rowden "required extensive and interdisciplinary neuromuscular reeducation and was to be seen by physical, occupational therapy, as well as speech language pathology and neuropsychology." (Dr. Rowden's Physician Expert's Affidavit at 4). According to Nurse Ual "on our unit basically all our patients are fall risk and we treat them the same because being in a rehab unit you have to have limitations. I mean, certain weakness…" (Nurse Ual's Deposition at 46). On October 13, 2014, Dr. Rowden underwent a fall risk assessment and received a score of 15.

On October 14, 2014, Dr. Rowden was examined by Natashia Brown, Ph.D. ("Dr. Brown"), a psychologist. Brown reported that Dr. Rowden was "alert, oriented to person, place and time and able to follow multi-step instructions" and Dr. Rowden's "personal safety and judgment, and short- and longterm memory were all intact." Dr. Brown further reported that Dr. Rowden was "calm, cooperative, pleasant and introspective" and Dr. Rowden's quality of thinking was within normal limits and he also "verbalized good safety awareness and judgment." Later that day, Dr. Rowden had his initial physical therapy evaluation, which noted that Dr. Rowden was alert, attentive and cooperative and did not display any impulsive movements.

Dr. Rowden's plan of care involved one-hour sessions of physical therapy daily involving numerous trainings and education. On October 14, 2014, Dr. Rowden was also evaluated by speech and language pathologist Amanda Haddad, SLP, noted in the medical records that Dr. Rowden's short term memory was impaired. Later that day, Dr. Rowden was seen by Jennifer Del Corro ("Del Corro"), an occupational therapist, who noted in the medical records:

> Insight/Safety/judgment: does not appear to be impulsive however demos decreased safety awareness as evidenced by suddenly leaning forward to weightshift while seated in w/c, posing possible risk of loss of balance forward due to impaired sitting balance (seatbelt in place). Pt also p/w decreased insight into limitations, appearing focused on getting confirmation from therapist that he will "walk out of here" and "get back to typing on the computer".

On October 15, 2014, Dr. Rowden was seen by Dr. Levine with a plan for "Rehabilitation Nursing to emphasize patient safety, do routines contracts, and monitors vital signs and VO's." Later that day, Dr. Rowden was seen by Del Corro. The medical records note that Dr. Rowden continued to demonstrate decreased awareness of or insight into his limitations.

On October 16, 2014, Dr. Rowden had a neurological consult. The medical records indicate that Dr. Rowden's "[a]lertness level normal, attention/ concentration intact" and "[i]nsight & judgement are intact." Later that day, Dr. Rowden had a physical therapy and occupational therapy sessions.

On October 17, 2014, Dr. Rowden had physical therapy that focused on strengthening and balance training, speech therapy, and occupational therapy, as well as recreational and horticultural therapies. The medical records indicate that Dr. Rowden was "alert and congenial." Shortly thereafter, Dr. Im examined Dr. Rowden for the first time. Dr. Im found that Dr. Rowden was medically stable for continuation of his rehabilitation therapies and requiring ongoing 24-hour/day physician care for medical issues, including hypertension, DVT/PE as well as for coordination of mobility and safety retraining.

On October 18, 2014, Dr. Rowden underwent a fall risk assessment and received a score of 14. At 10:46am on October 18, 2014, the patient care technician observed Dr. Rowden sliding from his wheelchair to the floor. The medical notes state:

> Patient found supine in bed, awake and in no apparent distress in a Hoyer sling. Patient greeted this examiner and apologized for "creating extra work" for the staff. The patient described reaching for his rehab notebook on the table from his wheelchair, and sliding out of it accidentally. The patient denied hitting his head or any part of his body, and stated that he was pain free and had no complaints at this time. The patient was counseled to call for help when trying to get things out of his reach, which he agreed to.

At 2:30pm, Dr. Rowden had a physical therapy session for 60 minutes. At approximately 4:43pm, Dr. Im examined the patient and noted that Dr. Rowden "slipped out of wheelchair and slid onto his buttocks. No significant trauma/complications noted s/p/ fall. Pt without pain or discomfort afterwards. Pt denied specific complaints today otherwise." Dr. Im further noted that Dr. Rowden fell while "trying to reach for something from chair and losing balance" and Dr. Rowden "expresses awareness of safety risk and endorses that he will avoid further reaching and call for assistance in the future."

On October 19, 2014, Dr. Rowden underwent a fall risk assessment and received a score of 18. At approximately 9:45am on October 19, 2014, Dr. Rowden was found on the floor of his room, bleeding from a laceration on his forehead. Idris Amin, M.D., a medical resident, examined Dr. Rowden and reported that Dr. Rowden was reaching for an item on the side of his bed when he fell out of bed and was "very remorseful regarding the situation." A "stat" head CT scan was ordered by Admin and the medical records note that:

> CT scan showed small new hyperdensity within postsurgical edema, may represent small acute hemorrhage. Case discussed with Dr. Blum, who recommends rechecking CT scan at 7PM for interval change. Vitals and Neuro[logical] exam to be monitored closely. Critical Care notified, and will see patient as well, to monitor status.

At 11:30am Dr. Rowden underwent physical therapy in bed. The medical records noted that Dr. Rowden "tolerated [the] session well" with "no signs of distress or altered presentation." At approximately 1:20pm, Dr. Rowden "reported to his family (who were at the bedside with him while he was eating) that he was feeling 'woozy'" and "subsequently began vomiting and appearing increasingly lethargic and

diaphoretic." Neurology and the Critical Care team examined Dr. Rowden, the medical records indicate that Dr. Rowden "was able to open his eyes to voice and follow simple commands (open mouth, thumb up with R[ight] hand) and his pupils were noted to be reactive bilaterally but his right pupil was noted to be approximately 6mm in diameter while his left pupil was noted to be approximately 4mm in diameter." The medical records further note that after a "STAT hydralazine along with a Cardene drip was requested and ordered" Dr. Rowden's "mental status was noted to worsen to where he was unable to follow simple commands." The decision was made for an emergency transfer to Tisch Hospital for neurological intervention for "a worsening head bleed after his fall." Prior to Dr. Rowden's transfer Dr. Rowden was made to intubated "for airway protection given his declining mental status and anesthesia support was requested at the bedside for additional assistance."

On October 19, 2014 at approximately 2:54pm, Dr. Rowden was transported by ambulance from Rusk to Tisch Hospital's emergency department. Dr. Rowden underwent a right hemicraniectomy for evacuation of a subdural hematoma without complication. On October 27, 2014, Dr. Rowden was discharged to Mt. Sinai Hospital's acute rehabilitation unit.

Summary Judgment Standard

CPLR § 3212 provides in relevant part, that a motion for summary judgment,

> "shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party… [t]he motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact."

A defendant moving for summary judgment in a medical malpractice case has the burden of making a *prima facie* showing of entitlement to judgment as a matter of law by showing that "there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged" by introducing expert testimony that is supported by the facts in the record. *Rogues v. Nobel*, 73 A.D.3d 204, 206 [1st Dept. 2010]. Once the defendant has made this showing, the burden shifts to the party opposing the motion "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v. Prospect Hospital*, 68 N.Y.2d

320, 324 [1986]. Specifically, a plaintiff "must submit an affidavit from a physician attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged." *Rogues*, 73 A.D.3d at 207.

Pursuant to Public Health Law § 2805-d[2], "[t]he right of action to recover for medical, dental or podiatric malpractice based on a lack of informed consent is limited to those cases involving either (a) non-emergency treatment, procedure or surgery, or (b) a diagnostic procedure which involved invasion or disruption of the integrity of the body."

A defendant moving for summary judgment on a lack of informed consent claim must show that there is no factual dispute as to whether the plaintiff was informed "of any foreseeable risks, benefits or alternatives" of the treatment rendered. *Balzola v. Giese*, 107 A.D.3d 587, 588 [1st Dept. 2013].

Parties' Experts

In support of Defendants' motion for summary judgment, Defendants submit the Affirmation of Uri Adler, M.D. ("Dr. Adler"), a physician, Board Certified in Physical Medicine and Rehabilitation. According to Dr. Adler's Affirmation, he reviewed the pleadings, including the Verified Bill of Particulars, medical records and deposition transcripts. Dr. Adler opines with a reasonable degree of medical certainty that during Dr. Rowden's admission, "Defendants consistently educated the Plaintiff regarding fall prevention and put in place numerous safety measures to reduce the Plaintiff's risk of a fall." Dr. Adler further opines that Defendants "appropriately responded to the Plaintiff's falls, instituting additional safety measures when necessary, and also sought timely emergency interventions in the form of consultations, stat neurological imaging and emergent transport."

Dr. Adler opines that after Dr. Rowden's October 18, 2014 fall, "Defendants met the standard of care by re-educating" Dr. Rowden and properly addressed the fall by "1.) reinforcing safety precautions; 2.) having the call bell within plaintiffs reach; 3.) confirming that the plaintiffs bed / alarm was on; 4.) removing any distracting items outside of the plaintiffs reach; and 5.) and initiating frequent rounding at 15-minute intervals." Dr. Adler opines that after the October 19, 2014 fall, Defendants "sought timely emergency interventions in the form of consultations, stat neurological imaging and emergent transport." Dr. Adler opines that Dr. Rowden was not a significant fall risk because he was consistently compliant with safety precautions and lacked any strong impulsive or restless tendencies.

Therefore, Dr. Adler opines that the hourly observation was an appropriate level of monitoring and within the standard of care for Dr. Rowden.

In opposition, Dr. Rowden submits a redacted Affidavit of a physician ("Dr. Rowden's Physician Expert"), board certified in physical medicine and rehabilitation and spinal cord injury medicine. The Affidavit states that Dr. Rowden's Physician Expert has reviewed Dr. Rowden's hospital charts, the bills of particular, the depositions of the parties and the Affirmations of Dr. Adler. Dr. Rowden's Physician Expert opines within in a reasonable degree of medical certainty that the care rendered by Defendants to Dr. Rowden "did not comply with good and accepted standards of medical care and practice and Defendants' departures were a substantial factor in causing the plaintiff's fall out of his hospital bed on October 19, 2014 and the injuries claimed herein, including but not limited to, a subdural hematoma." Dr. Rowden's Physician Expert opines that Dr. Rowden demonstrated a high risk for fall and/or injury after October 18, 2014. Dr. Rowden's Physician Expert states that while Dr. Im describes Dr. Rowden as having "adequate impulse control" during his examination, Dr. Im fails to consider that his assessment was done in a single limited period. Dr. Rowden's Physician Expert opines that the "numerous therapy notes regularly referenced [Dr.] Rowden's frequent impulsivity, poor self-monitoring, limited awareness of his physical deficits, impaired memory and judgment, and his poor trunk control." Additionally, Dr. Rowden's Physician Expert opines that educating Dr. Rowden on "fall prevention would certainly not be sufficient to reduce the likelihood that he would have additional falls on the unit" because the medical records indicate that Dr. Rowden had reduced selective attention and impaired short term memory. Dr. Rowden's Physician Expert opines that "the best answer on October 18 would have been assigned a staff member to remain constantly by his side in order to physically assist him or provide verbal reminders to stop any unsafe behaviors, NOT every 15 minute checks." Dr. Rowden's Physician Expert opines that Dr. Rowden "was indeed impulsive, that his judgment was limited, and that his behavior was unpredictable," therefore, Dr. Rowden should have had 1:1 or 1:2 supervision.

Furthermore, Dr. Rowden's Physician Expert opines that Defendants departed from good and accepted standards of nursing care and practice by failing to consistently evaluate Dr. Rowden's fall risk when performing daily fall risk assessments which resulted in Dr. Rowden's injuries from the fall on October 19, 2014. Dr. Rowden's Physician Expert opines that prior to the October 18 fall, Dr. Rowden's fall risk was assessed 14 times, and only five of the reports indicated Dr. Rowden's history of falls and only four of the reports stated that Dr. Rowden had sensory and cognitive defects.

Dr. Rowden also submits a redacted Affidavit of a nurse ("Dr. Rowden's Nurse Expert"), a registered nurse with over 34 years of clinical experience in medical-surgical, pediatrics, PACU, and ambulatory care. The Affidavit states that Dr. Rowden's Nurse Expert has reviewed Dr. Rowden's hospital charts, the bills of particular, the depositions of the parties and the Affirmations of Dr. Adler. Dr. Rowden's Nurse Expert opines "within a reasonable degree of medical certainty that [Dr.] Rowden's fall was not inevitable but rather preventable and the result of the defendants, failures to properly implement fall prevention measures." Dr. Rowden's Nurse Expert opines that "[g]ood and accepted standards of nursing care and practice required that nursing keep a urinal within reach." Dr. Rowden's Nurse Expert opines that as a result of the departure Dr. Rowden fell and sustained injures. Dr. Rowden's Nurse Expert further opines that Defendants failed to properly and/or consistently assess Dr. Rowden's fall risk and to provide adequate supervision to Dr. Rowden to prevent the October 19, 2014 fall.

Discussion

Defendants make a *prima facie* showing of entitlement to summary judgment. *Alvarez,* 68 N.Y.2d at 324. Defendants, through Dr. Adler's Affirmation, demonstrate that Defendants properly assessed Dr. Rowden's fall risk and properly educated Dr. Rowden regarding safety precautions and potential fall risks. Dr. Adler opines that Dr. Rowden should not have been classified as a significant fall risk because Dr. Rowden complied with "safety precautions and lacked any strong impulsive or restless tendencies." Dr. Adler opines that after Dr. Rowden's October 18, 2014 fall, "Defendants met the standard of care by re-educating" Dr. Rowden and properly addressed the fall by "1.) reinforcing safety precautions; 2.) having the call bell within plaintiffs reach; 3.) confirming that the plaintiffs bed / alarm was on; 4.) removing any distracting items outside of the plaintiffs reach; and 5.) and initiating frequent rounding at 15-minute intervals." Dr. Adler opines that after the October 19, 2014 fall, Defendants "sought timely emergency interventions in the form of consultations, stat neurological imaging and emergent transport."

Since Defendants have made a *prima facie* showing of entitlement to summary judgment, the burden now shifts to Dr. Rowden to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action. *Lindsay-Thompson*, 147 A.D.3d at 639. Dr. Rowden submits the redacted Affidavits of Dr. Rowden's Physician Expert and Dr. Rowden's Nurse Expert which show "material issues of fact which require a trial of the action." *Alvarez,* 68 N.Y.2d at 324. Dr. Rowden's Physician Expert opines that the medical records demonstrate that Dr. Rowden had "frequent impulsivity, poor self-monitoring, limited awareness of his physical deficits, impaired memory and judgment, and his poor trunk control"

and selective attention and impaired short term memory, thus Dr. Rowden should have had 1:1 or 2:1 supervision. Dr. Rowden's Physician Expert further opines that educating Dr. Rowden on "fall prevention would certainly not be sufficient to reduce the likelihood that he would have additional falls on the unit" because the medical records indicate that Dr. Rowden had reduced selective attention and impaired short term memory. Also, Dr. Rowden's Physician Expert opines that Dr. Rowden's apologies for his fall on October 18, 2014 and his assurance that he would be more careful should not have been relied on by Dr Im. Dr. Rowden's Physician Expert further opines that Defendants departed from good and accepted standards of nursing care and practice by failing to consistently evaluate Dr. Rowden's fall risk when performing daily fall risk assessments. Therefore, Dr. Rowden's Physician Expert opines that Defendants' departure from good and accepted standards of medical care and practice "were a substantial factor in causing the plaintiff's fall out of his hospital bed on October 19, 2014 and the injuries claimed herein, including but not limited to, a subdural hematoma."

Additionally, Dr. Rowden's Nurse Expert opines that Dr. Rowden's fall on October 19, 2014 was preventable. Dr. Rowden's Nurse Expert opines that "[g]ood and accepted standards of nursing care and practice required that nursing keep a urinal within reach" and as a result of the urinal being out of Dr. Rowden fell and sustained injures. Dr. Rowden's Nurse Expert further opines that Defendants failed to properly and/or consistently assess Dr. Rowden's fall risk and to provide adequate supervision to Dr. Rowden. Dr. Rowden has satisfied his burden. Therefore, Defendants' motion for summary judgment on the medical malpractice cause of action is denied.

The Court notes that Dr. Rowden's experts do not opine that Defendants were either negligent or professionally negligent in regard to the care rendered that resulted in Dr. Rowden's fall on October 18, 2014. However, such fall is relevant to the treatment that followed, but was not in and of itself a departure.

Turning to informed consent, Defendants argue that Dr. Rowden has not alleged that in failing to prevent Dr. Rowden's fall, "Defendants invaded the plaintiff's bodily integrity." *See* Public Health Law § 2805-d[2]. Defendants assert that to the extent Dr. Rowden claims that his alleged injuries resulted from Defendants' care and treatment after Dr. Rowden's fall on October 19, 2014, informed consent must be dismissed because the treatment rendered by Defendants was on an emergency basis. Dr. Rowden does not oppose Defendants' motion to dismiss the claim for lack of informed consent. Thus, Defendants' motion for summary judgment on the informed consent cause of action is granted.

Frye Standard

"The important purpose of the *Frye* test is to ensure that courts do not rely upon an expert's testimony regarding a novel procedure, methodology or theory unless it has been 'generally accepted' within the relevant scientific community as leading to reliable results." *Marsh v. Smyth*, 12 AD3d 307, 310 [1st Dept 2004]. "The focus of the *Frye* test is to distinguish between scientific principles which are 'demonstrable' and those which are 'experimental' (*see People v. Wesley,* 83 N.Y.2d 417, 422, 611 N.Y.S.2d 97, 633 N.E.2d 451 [1994], quoting *Frye,* 293 F. at 1014)." *Id.* "The *Wesley* Court went on to emphasize that the particular procedure need not be unanimously indorsed by the scientific community but must be generally accepted as reliable." *Id.* (citation omitted). It "is not for our Court to determine whether the was or was not reliable … but whether there was consensus in the scientific community as to its reliability." *People v. Wesley*, 83 NY2d 417, 439 [1994].

Discussion

Defendants contend that Dr. Rowden's expert will opine that Defendants were negligent in failing to institute 1:1 observation of Dr. Rowden after the October 18, 2014 fall. Defendants argue that Dr. Rowden's expert should be precluded from testifying this theory of liability because "it is not founded upon generally accepted scientific principles, does not represent the accepted medical standard of care and has no support in the medical literature." Defendants assert that there is no support in the medical community for the 1:1 observation in the acute rehabilitation setting for a patient without aggressive, strongly impulsive or restless tendencies. Defendants argue that Dr. Rowden has the burden to establish the theory as one that "is generally accepted within the relevant scientific community." Defendants contend that Dr. Adler "performed a search of the medical literature to look for any support for plaintiff's claim that 1:1 observation is indicated in the acute rehabilitation setting for a patient without aggressive, strongly impulsive or restless tendencies" and there was no support for the claim." Defendants argue that medical literature supports constant, 1:1 observation only in where a patient is "greatly confused, consistently restless, impulsive and agitated and/or a threat to themselves or others."

Dr. Rowden argues that a Frye hearing is not warranted. Dr. Rowden asserts that Defendants' claim that standard of care and medical literature do not require constant 1:1 observation after a fall unless a patient was confused, restless, impulsive, agitated or a threat to himself or others contradicts the NYU Constant Observation nursing protocol, which states "that constant observation can be

initiated by nursing personnel for patient safety if a patient is at risk for falls." Dr. Rowden's Physician Expert opines that Dr. Rowden presented behavioral characteristics, such as impulsivity, poor self-monitoring, limited awareness of his physical deficits, impaired memory and judgment, and poor trunk control in addition to his recent fall, a recent surgery and anticoagulation therapy, that made him a candidate for constant observation under NYU guidelines and protocols. Dr. Rowden argues that constant 1:1 observation is not a "novel, unsupported measure," but the issue is whether Dr. Rowden was a candidate for it. Dr. Rowden asserts that even if Dr. Adler is correct that there is no literature to support 1:1 observation in the absence of behavioral concerns, Dr. Rowden's Physician Expert opines that Dr. Rowden did display behavioral concerns, a recent fall, a recent surgery, and anticoagulation therapy that made him a candidate. Dr. Rowden argues that it is a different in expert opinion regarding standard of care and "at best, goes to the weight of the testimony and not one which requires a Frye hearing."

Dr. Rowden has not put forth "a novel procedure, methodology or theory" but instead the issue comes down to whether or not Dr. Rowden was a candidate for constant 1:1 observation. *See Marsh*, 12 AD3d at 310. Defendants and Dr. Rowden have submitted expert opinions on what the standard of care is for Defendants. The standard of care should be left for the jury to decide based on the testimony at trial. Therefore, a Frye hearing is not warranted.

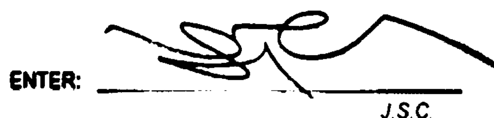
Wherefore, it is hereby

ORDERED that Defendants' motion for summary judgment is granted to the extent that Dr. Rowden's informed consent claim is dismissed; and is further

ORDERED that the parties are directed to appear on June 30, 2020 at 9:30am in Part 6 at 71 Thomas Street for a Pre-Trial conference.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: MAY 1, 2020

ENTER: 

J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION