Nazario v Mount Sinai Beth Israel
2020 NY Slip Op 32392(U)
July 1, 2020
Supreme Court, New York County
Docket Number: 805623/2015
Judge: George J. Silver

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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LISETTE NAZARIO, as Administrator of the Estate of FRANCISCA CRUZ, Deceased, and LISETTE NAZARIO, Individually,

Index No. 805623/2015
Motion Seq. Nos. 004, 005, 006, 007

Plaintiff,

-v-

DECISION & ORDER

MOUNT SINAI BETH ISRAEL, JOCK AVOLIO, M.D., FELIX KARAFIN, M.D., DEWITT REHABILITATION AND NURSING CENTER, INC; DANIEL KLEIN, M.D., AND JESSICA SILVERSTEIN, FNP,

Defendants.

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GEORGE J. SILVER, J.S.C.:

Defendants JESSICA SILVERSTEIN, FNP[1] ("NP Silverstein"), MOUNT SINAI BETH ISRAEL ("Mt. Sinai"), JOCK AVOLIO, M.D. ("Dr. Avolio"), and FELIX KARAFIN, M.D.[2] ("Dr. Karafin"), DANIEL KLEIN, M.D.[3] ("Dr. Klein"), and DEWITT REHABILITATION AND NURSING CENTER, INC.[4] ("DeWitt" collectively "defendants") move for summary judgment. Plaintiff LISETTE NAZARIO ("plaintiff"), as administrator of the estate of FRANCISCA CRUZ ("decedent"), deceased, and as a litigant in her individual capacity, opposes the motions.[5]

On July 23, 2013, at approximately l0:30 a.m., decedent, then 73-years-old, developed left-sided numbness, weakness, and dysarthria (slowed or slurred speech). At approximately 11:10 a.m., decedent arrived at Mt. Sinai's emergency department. Decedent reported a history of high

[1] Motion Sequence No. 004 (NP Silverstein).
[2] Motion Sequence No. 005 (Mt. Sinai, Dr. Avolio, and Dr. Karafin, collectively "Mt. Sinai").
[3] Motion Sequence No. 006 (Dr. Klein).
[4] Motion Sequence No. 007 (DeWitt Rehabilitation).
[5] The court will decide Motion Seq. Nos. 004-007 collectively in the decision herein.

blood pressure, and that she was not taking medication. Decedent's blood pressure was 156/65, and at 11:12 a.m., a stroke code was called. At 11:45 a.m., tissue plasminogen activator ("TPA")[6] was started which improved decedent's symptoms. Decedent also received IV nicardipine.[7]

At approximately 10:30 p.m., decedent experienced left hemiplegia,[8] and a CT scan confirmed a stroke. Decedent was admitted to the stroke unit under a plan for antihypertensive control, frequent neurology checks, and rehabilitation. Mt. Sinai planned to maintain decedent's blood pressure at less than 185, hold all anticoagulants for 24 hours, and then start decedent on aspirin. At 11:00 p.m., decedent's neurologic condition changed, and decedent was unable to move her left side. A CT scan of decedent's brain was stable, and negative for hemorrhagic conversion. Mt. Sinai restarted nicardipine.

On July 24, 2013, the vascular neurology service documented that decedent was receiving atorvastatin.[9] On July 25, 2013, decedent was started on enalapril[10] twice daily for blood pressure control. Decedent's blood pressure varied from 136/94 to 175/96 at that time.

On July 26, 2013, decedent's medications included aspirin, atorvastatin, enalapril, diazepam, ibuprofen, and subcutaneous heparin. Decedent's blood pressure varied from 152/67 to 165/66.

On July 27, 2013, a vascular neurology progress note documented that decedent's medications remained the same. Decedent's blood pressure ranged from 160/60 to 181/73. Decedent was to continue enalapril twice daily.

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[6] TPA is an enzyme that dissolves blood clots, and is used to treat an ischemic stroke.
[7] Nicardipine is used to treat high blood pressure and to control angina (chest pain).
[8] Hemiplegia is the paralysis of one side of the body.
[9] Atorvastatin is used to improve cholesterol levels and decrease the risk of heart attack and stroke.
[10] Enalapril is used to treat high blood pressure.

On July 28, 2013, decedent's blood pressure ranged from 134/5l to 190/62. On July 29, 2013, decedent's medications included atorvastatin, hydrocortisone cream, labetalol, aspirin, enalapril, and other non-anti-hypertensive medications. Decedent's blood pressure ranged from 153/65 to 195/80. That same day, Dr. Karafin noted decedent's history of hypertension, and evaluated decedent's suitability for inpatient rehabilitation.

On July 30, 2013, decedent's medications included subcutaneous heparin, hydrocortisone cream, diazepam, enalapril, aspirin, atorvastatin, and acetaminophen. Decedent was stable with improving neurological status. The plan was to increase enalapril to 5 mgs every 12 hours to allow decedent's blood pressure to further decrease as decedent was seven days post-stroke.

On July 31, 2013, decedent was discharged to Mt. Sinai's acute inpatient rehabilitation ("MSAIR"). Upon discharge, decedent's mediations included enalapril. Prior to her transfer, Dr. Karafin evaluated decedent, and noted that medical management was required for decedent's hypertension. At MSAIR, Dr. Avolio, the attending physician, noted that decedent's medical history included hypertension, and the plan was to continue decedent on a cardiac diet and enalapril 5 mgs every 12 hours. At 10:00 a.m. and 10:00 p.m., enalapril was administered.

On August 3, 2013, Dr. Karafin saw decedent, and noted that decedent complained of a cough that was attributed to enalapril. Enalapril was discontinued, and losartan was prescribed.

On August 4, 2013, losartan was administered, which decedent tolerated well. The plan was to follow decedent's blood pressure on losartan. Losartan was thereafter administered from August 5, 2013 through August 18, 2013.

On August 19, 2013, decedent was stable for discharge to a sub-acute rehabilitation facility. Losartan was no longer listed on decedent's medication administration sheet.

On August 20, 2013, decedent was admitted to DeWitt under the service of Dr. Klein. Decedent was not taking anti-hypertensive medications at the time of discharge, and her DeWitt admission medications did not include the same. At DeWitt, decedent was to follow a cardiac diet and continue physical therapy. After consulting with Dr. Klein, NP Silverstein discontinued Heparin, and continued decedent on aspirin, acetaminophen, and ibuprofen as needed. NP Silverstein also ordered that decedent's blood pressure and pulse be taken daily for 30 days. However, the order was discontinued on August 25, 2013.

On August 24, 2013, decedent complained of lower back pain, and was given Tylenol and ibuprofen. On August 25, 2013, decedent was given Motrin. On August 26, 2013, Dr. Klein saw decedent, and noted that decedent's blood pressure was 130/80 with a respiration of 18. Dr. Klein believed that "at the time of discharge from the hospital, the patient was not receiving any antihypertensive medications. So the plan would be to monitor her blood pressure." Dr. Klein also noted that decedent's medication regimen appeared to be effective.

On August 31, 2013, decedent complained of pain, and was given pain medication. Later that day, decedent was found unresponsive after she was transferred from her bed to a wheelchair. No pulse or blood pressure could be found, and CPR was initiated. Decedent was then transferred to Lenox Hill Hospital (Lenox Hill").

Upon admission at Lenox Hill, decedent was unresponsive, with a heart rate of 62, a blood pressure of 70/42, and an oxygen saturation level of 98%. Resuscitation was continued, and vasopressors and antibiotics were administered. Decedent's blood pressure and heart rate returned, however, decedent did not regain consciousness.

That same day, decedent underwent a CT scan of her head, which showed intraparenchymal bleeding extending from the right lentiform nucleus to the corona radiate, and a

2.8 x 1.3 cm intra-axial hematoma in the right basal ganglia producing a minimal mass effect. On September 2, 2013, decedent passed away.

Plaintiff alleges that NP Silverstein 1) failed to ensure that DeWitt's nursing staff complied with her order for daily blood pressure monitoring, 2) negligently discontinued the order for daily blood pressure checks on August 25, 2013, and 3) failed to realize decedent's need for anti-hypertensive medication, and order/administer the same.

Plaintiff alleges that Mt. Sinai departed from the standard of care by 1) ceasing the administration of losartan on August 19, 2013, 2) failing to have a properly signed "medication reconciliation" that included anti-hypertensive medication, and 3) failing to order, prescribe, or communicate the need for anti-hypertensive medication upon decedent's transfer to DeWitt.

Plaintiff alleges that Dr. Klein failed to 1) ensure that DeWitt complied with the orders for daily blood pressure checks, 2) appreciate the severity of decedent's back pain on August 26, 2013, and place an order for more frequent blood pressure checks in response to decedent's pain, and 3) realize decedent's need for anti-hypertensive medication, and failed to order/administer the same. Plaintiff also alleges that Dr. Klein negligently discontinued the order for daily blood pressure checks on August 25, 2013.

Finally, plaintiff alleges that DeWitt failed to 1) comply with orders to take decedent's blood pressure as of August 24, 2013, 2) notify Dr. Klein and/or NP Silverstein of the severity of decedent's back pain, and 3) take and/or or record decedent's daily blood pressure values.

ARGUMENTS

Based on the record before the court, defendants argue that summary judgment must be granted, because plaintiff cannot establish that defendants' medical treatment of decedent deviated from accepted standards of care or proximately caused decedent's alleged injuries and/or death.

I. NP Silverstein

In support of her motion, NP Silverstein annexes the affirmation of Roy Goldberg, M.D. ("Dr. Goldberg"), a physician "certified in geriatrics." Dr. Goldberg opines that decedent was properly placed on anti-hypertensive medication at the hospital following her stroke, and that it was proper to switch decedent from enalapril to losartan when decedent developed a cough, a known side-effect of enalapril.

Dr. Goldberg notes that NP Silverstein treated decedent once on August 20, 2013, at which time NP Silverstein conducted an admitting physical examination of decedent, and noted decedent's history of hypertension. According to Dr. Goldberg, decedent's history of hypertension alone, without a corresponding note of anti-hypertensive medications on decedent's transfer document, was not a reason to prescribe decedent with medication at that time. Dr. Goldberg also highlights that decedent's blood pressure was within normal limits at the time of her examination. As such, Dr. Goldberg concludes that it was appropriate for NP Silverstein not to immediately prescribe decedent with anti-hypertensive medication, but to monitor decedent's blood pressure.

Dr. Goldberg further opines that NP Silverstein properly discontinued decedent's subcutaneous heparin injections upon decedent's transferred to DeWitt. Dr. Goldberg notes that decedent had been receiving daily aspirin therapy at Mt. Sinai, a less potent form of anticoagulation, and that decedent continued to receive aspirin daily at DeWitt. Finally, Dr. Goldberg avers that Dr. Klein "basically ratified" NP Silverstein's conduct since Dr. Klein continued the same course of treatment when he saw decedent.

II. Mt. Sinai, Dr. Avolio, and Dr. Karafin ("Mt. Sinai")

Mt. Sinai argues that plaintiff's lack of informed consent claim as to the administration of TPA must be dismissed as plaintiff does not claim any injury secondary to its administration.

In support of their motion, Mt. Sinai annexes the affirmation of Jerry Gliklich, M.D. ("Dr. Gliklich"), a physician board-certified in internal medicine and cardiovascular diseases.

In Dr. Gliklich's opinion, Mt. Sinai properly maintained decedent's blood pressure in a permissive hypertension range between 160 and 185, and only administered anti-hypertensive medications as needed. Dr. Gliklich explains that anti-hypertensive medications are effective in lowering systolic pressures, and that a post-stroke patient's systolic blood pressure should be kept higher than normal (permissive hypertension) in order to force blood through the arteries to ensure adequate perfusion pressure. In that regard, Dr. Gliklich notes that once decedent was stabilized following the administration of TPA, Mt. Sinai planned to maintain decedent's systolic blood pressure at less than 185, and later at a level below 200. As such, Dr. Gliklich posits that Mt. Sinai properly ordered that labetalol be administered only if decedent's systolic blood pressure rose above 185, and discontinued if decedent's heart rate dropped below 60, as this would ensure that decedent's systolic blood pressure remain at therapeutic levels without slowing decedent's heart rate to suboptimal levels.

Dr. Gliklich also opines that Mt. Sinai properly changed decedent's medication order on July 25, 2013 to reflect an upper systolic pressure limit of 200 to achieve perfusion pressure through permissive hypertension. Similarly, Dr. Gliklich contends that Mt. Sinai consistently checked decedent's blood pressure, and planned to maintain elevated systolic pressure throughout decedent's admission at Mt. Sinai.

Dr. Gliklich further opines that Mt. Sinai properly administered enalapril every 12 hours upon decedent's admission to MSAIR to ensure that decedent's blood pressure remained within appropriate levels (between 110 and 140). According to Dr. Gliklich, every blood pressure reading does not have to be within this range to be considered appropriate or normal. Rather, Dr. Gliklich

proffers that blood pressure changes throughout the day, and that a physician's attention is required if a patient's blood pressure is trending in one direction or another. In that regard, Dr. Gliklich highlights that following decedent's admission to MSAIR, decedent's blood pressure began to normalize following some fluctuation during her first three days of taking enalapril. Moreover, Dr. Gliklich opines that Dr. Karafin properly switched decedent from enalapril to losartan after decedent complained of a cough following the administration of enalapril for four days.

Dr. Gliklich also opines that Mt. Sinai properly checked decedent's blood pressure more than once daily at MSAIR, and properly planned to lower decedent's blood pressure outside the range of permissive hypertension following her transfer to MSAIR on July 30, 2013. According to Dr. Gliklich, it was appropriate to transition from permissive hypertension to a normotensive state to aid in stroke recovery and "achieve cardiovascular health."

In Dr. Gliklich's opinion, by August 18, 2013, decedent's blood pressure had been normotensive for 17 days, and it was appropriate for Mt. Sinai to discontinue decedent's anti-hypertensive medication to determine whether decedent's blood pressure would remain normal without anti-hypertensive medication. Dr. Gliklich contends that decedent did not require anti-hypertensive medication since Mt. Sinai took additional measures to ensure that decedent remained normotensive once losartan was discontinued. Specifically, Dr. Gliklich highlights that decedent was undergoing physical therapy regularly, and was following a cardiac diet consisting of low saturated fats and lactose. Dr. Gliklich also points out that decedent's blood pressure was 121/74 on August 18, 2013, and did not elevate to "a point of concern and in need of intervention" once losartan was discontinued. Dr. Gliklich further notes that decedent was normotensive upon her discharge from Mt. Sinai. As such, Dr. Gliklich concludes that Mt. Sinai was not required to "document that the medications were discontinued to determine if they were still needed."

Additionally, Dr. Gliklich opines that Mt. Sinai formulated a comprehensive plan to treat decedent's transient back pain, and properly prescribed decedent with ibuprofen, diazepam, and valium to address her back pain and back spasms. Dr. Gliklich also notes that back pain is a non-specific complaint, which is not uncommon for physical therapy patients or patients in their 70s.

Specifically, Dr. Gliklich opines that Mt. Sinai properly administered nonsteroidal anti-inflammatory drugs ("NSAID") during decedent's admission at MSAIR. Dr. Gliklich avers that any NSAID that decedent received at Mt. Sinai would have metabolized out of her system prior to her discharge. Similarly, Dr. Gliklich asserts that because there are no NSAIDs with a half-life of more than 100 hours, any NSAID that decedent received prior to her admission at Mt. Sinai would not have been in her system over two weeks later. Likewise, Dr. Gliklich notes that since ibuprofen is a rapidly metabolized drug with a half-life of 1.8 to 2 hours, it is impossible for any ibuprofen given to decedent on or before August 16, 2013 to have remained in her system at the time she went into cardiac arrest on August 31, 2016. Dr. Gliklich explains that once ibuprofen is broken down in the body, all traces are gone within 24 hours.[11] As such, Dr. Gliklich concludes that Mt. Sinai did not cause or contribute to decedent's cardiac arrest or stroke on August 31, 2013.

Moreover, Dr. Gliklich opines that contrary to plaintiff's assertion that it is contraindicated to administer aspirin to a post-stroke patient following an ischemic stroke like the one decedent suffered on July 23, 2013, the administration of an antiplatelet agent like aspirin is required to prevent new clots from forming. Dr. Gliklich also maintains that it was proper for Mt. Sinai to administer aspirin (81 mg) for post-stroke treatment together with sporadic doses of ibuprofen (400 mg) for back pain as the concurrent use of both drugs in their respective doses does not have

[11] Dr. Gliklich opposes plaintiff's statement that NSAIDs are contraindicated in a post-stroke patient with a history of NSAID use. Dr. Gliklich also notes that ibuprofen does not cause strokes in patients who have already suffered a stroke.

adverse effects, and does not reduce the efficacy of the aspirin. Dr. Gliklich further posits that because decedent did not have a stroke within the first 24 hours after discontinuing both medications, plaintiff's argument that the simultaneous use of aspirin and ibuprofen can cause a stroke is baseless. Rather, Dr. Gliklich reiterates that Mt. Sinai administered appropriate medications to decedent, and that none of the medications caused decedent to suffer a "stroke" 11 days post-discharge. Instead, Dr. Gliklich underscores that every patient who suffers a stroke is at risk of suffering a second stroke.

Dr. Gliklich also opines that there were no further actions required from MSAIR following decedent's discharge. Dr. Gliklich also highlights that MSAIR provided all the information that DeWitt needed to continue decedent's care and treatment, and that MSAIR's discharge documents and DeWitt's admission papers show that a plan was in place for decedent's continued treatment. Dr. Gliklich also points out that DeWitt's admission document "made it clear" that its staff was aware of decedent's treatment at Mt. Sinai, as well as decedent's history of stroke and hypertension. Dr. Gliklich further notes that NP Silverstein testified that DeWitt's nurses monitored decedent's blood pressure daily upon decedent's transfer to DeWitt.

In Dr. Gliklich's opinion, there is no connection between decedent's normal blood pressure readings at MSAIR and the pulseless electrical activity ("PEA") that decedent suffered on August 31, 2013. Dr. Gliklich submits that decedent was not hypertensive during her admission at Mt. Sinai or after her discharge. Dr. Gliklich also notes that while decedent was "on permissive hypertension" for approximately one week for post-stroke treatment, decedent was not hypertensive after her blood pressure normalized at MSAIR, when she was transferred to DeWitt, or when she was taken to Lenox Hill. Rather, Dr. Gliklich points out that when decedent arrived at Lenox Hill, her blood pressure was hypotensive at 70/42 even after she was given vasopressors.

As such, Dr. Gliklich concludes that plaintiff cannot link decedent's PEA on August 31, 2013 to hypertension since decedent was not hypertensive after her period of permissive hypertension.

In further support of its motion, Mt. Sinai annexes the affirmation of Mitchell Elkind, M.D. ("Dr. Elkind"), a physician board-certified in neurology and vascular neurology. Dr. Elkind opines that based on decedent's clinical diagnosis of a stroke with no evidence of a hemorrhage on a CT scan, Mt. Sinai properly diagnosed decedent with an ischemic stroke and administer TPA.

Dr. Elkind also opines that plaintiff's claim that decedent's blood pressure was medically uncontrolled at Mt. Sinai is inaccurate. Dr. Elkind notes that prior to decedent's discharged to MSAIR, decedent was properly kept on permissive hypertension, which is common for a patient during the first week post-stroke in order to increase perfusion and minimize ischemia of the brain.

Similarly, Dr. Elkind opines that plaintiff's claim that decedent was hypertensive when she was found unresponsive on August 31, 2013 is incorrect. Dr. Elkind highlights that there is no evidence that decedent was hypertensive following her discharged from Mt. Sinai. Dr. Elkind also notes that decedent's Lenox Hill records show that decedent's blood pressure was 70/42 upon her arrival, which is hypotensive. As such, Dr. Elkind posits that plaintiff speculates that decedent's unresponsiveness was caused by a failure to prescribe decedent with anti-hypertensive medication.

Likewise, Dr. Elkind opines that plaintiff's claim that the administration of ibuprofen caused decedent's stroke more than 11 days later is unfounded. Dr. Elkind contends that seven doses of 400 mg of ibuprofen is a standard over-the-counter dose, and that because the half-life of ibuprofen is "so low," any ibuprofen that decedent received at Mt. Sinai was out of her system prior to her transfer to DeWitt. Dr. Elkind further elaborates that 400 mg of ibuprofen cannot cause a second stroke or a secondary bleed, and that decedent's Lenox Hill CT scans do not support such a theory. As such, Dr. Elkind concludes that Mt. Sinai properly administered ibuprofen.

Dr. Elkind also opines that plaintiff's allegation that decedent suffered a second stroke or secondary bleed is based on a misreading of decedent's Lenox Hill records. Specifically, Dr. Elkind notes that when decedent arrived at Lenox Hill on August 31, 2013, decedent was diagnosed with PEA, which occurs when there is electrical activity in the heart, but no pulse. Dr. Elkind explains that while PEA can be caused by any number of "acute profound cardiac insults" that weaken cardiac contraction, it is not caused by normal blood pressure following a period of permissive hypertension. In that regard, Dr. Elkind highlights that upon decedent's arrival at Lenox Hill, a CT scan of her brain showed a small intraparenchymal bleed measuring approximately 2.5 x 1.1 cm in the region of her prior stroke, and that a second CT scan the following morning confirmed that the bleeding was in the area of her July 23, 2013 stroke.

Furthermore, Dr. Elkind opines that while plaintiff claims that decedent suffered a "second stroke" based on the presence of blood on her Lenox Hill CT scan, blood on a brain scan does not mean that a separate hemorrhagic[12] stroke occurred. According to Dr. Elkind, while an ischemic stroke (the type that decedent suffered on July 23, 2013) is caused by a clot in a specific artery, a hemorrhagic stroke occurs when a vessel breaks, and causes a bleed in the brain. Dr. Elkind explains that following an ischemic stroke, it is common for there to be some bleeding into the dead tissue where the stroke occurred, and for the bleeding to evolve over time, however, the bleeding eventually gets absorbed into the brain. As such, Dr. Elkind reiterates that the blood seen on decedent's Lenox Hill CT scan was in the same area of decedent's brain where her July 23, 2013 stroke occurred.

Finally, Dr. Elkind opines that even if decedent had suffered a hemorrhagic stroke on August 31, 2013, the amount of blood seen on her CT scans (approximately 2 cc) is not enough to

[12] Dr. Elkind notes that there is no evidence in the Lenox Hills records to show that decedent suffered a hemorrhagic stroke.

cause a patient to suffer a catastrophic cardiac event that leads to brain death and eventual death. Rather, Dr. Elkind posits that there would need to be more than 30 cc of blood in order for a bleed in the brain to cause a catastrophic cardiac event.

III. Dr. Klein

Dr. Klein argues that contrary to plaintiff's assertion that decedent suffered a hemorrhagic conversion of her thrombotic cerebrovascular accident ("CVA") because she was not continued on anti-hypertensive medication, decedent's blood pressure was within normal limits in the "immediate period" prior to her death. Dr. Klein avers that given decedent's clinical needs, her blood pressure was stable (although slightly elevated), and compatible with the clinical goal of increasing blood flow through the middle cerebral artery ("MCA"). Therefore, Dr. Klein concludes that anti-hypertensive medication was not indicated.

Dr. Klein also argues that contrary to plaintiff's contention that the administration of NSAIDs caused and/or contributed to the development of decedent's hemorrhagic conversion,[13] the administration of aspirin and ibuprofen is acceptable for patients recovering from a CVA.

Likewise, Dr. Klein asserts that contrary to plaintiff's allegations that Dr. Klein failed to 1) ensure that orders for daily blood pressure monitoring were followed, 2) get decedent out of bed, and 3) disclose the risks, benefits, and alternatives to treatment, Dr. Klein was a voluntary physician at DeWitt at the time he treated decedent. Dr. Klein notes that he was not an employee at DeWitt, and did not have financial or other arrangement with DeWitt. As such, Dr. Klein avers that he did not determine the "medical necessity for physician involvement," and was not responsible for supervising DeWitt's nursing staff. Similarly, Dr. Klein maintains that DeWitt's nurse practitioners were not his employees at the time that decedent was admitted at DeWitt.

[13] Dr. Klein underscores that decedent suffered a post-CVA seizure, not a hemorrhagic conversion.

In support of his motion, Dr. Klein annexes the affirmation of Vincent P. Garbitelli, M.D. ("Dr. Gabitelli"), a physician board-certified in internal medicine. Dr. Gabitelli opines that Dr. Klein's properly treated decedent during her admission at DeWitt. Dr. Gabitelli contends that the standard of care for any specialty of medicine includes a wide array of decisions that fall under the auspices of medical judgment, including decisions related to the use and/or discontinuance of medications. In that regard, Dr. Gabitelli avers that Dr. Klein's prescription of NSAIDs fell within accepted practice for treating a post-CVA patient like decedent.

Dr. Gabitelli also opines that decedent's cardiac arrest was neither predictable nor preventable. According to Dr. Gabitelli, decedent's cardiac arrest was likely precipitated by a seizure, and the mechanism of decedent's death was unrelated to any acts/omissions of Dr. Klein. Dr. Gabitelli explains that following a CVA, a patient is often at an increased risk for post-CVA seizures, and that these post-CVA seizures are not predictable or preventable. Dr. Gabitelli elaborates that although a regimen of post-CVA anti-epileptic medications might prevent post-CVA seizures, this is not the standard of care since these medications can sometimes interfere with a patient's rehabilitation. In that regard, Dr. Gabitelli posits that there was nothing that Dr. Klein could have done to change decedent's outcome.

IV. DeWitt Rehabilitation

Like Dr. Klein, DeWitt argues that Dr. Klein was not an employee of Dewitt in August of 2013, but was an attending physician with admitting privileges to provide voluntary services to unassigned patients at Dewitt. DeWitt also notes that NP Silverstein was an employee of Dr. Klein's company, East Side Primary Medical Care, P.C.

DeWitt further argues that because plaintiff did not depose any employees from Dewitt, there is no evidence to support plaintiff's claims for improper hiring and supervision. Similarly,

DeWitt contends that because it was a sub-acute rehabilitation facility, all procedures were conducted by non-employees, Dr. Klein, NP Silverstein, and Dr. Ferriter.[14] As such, DeWitt requests that plaintiff's claim that DeWitt failed to inform decedent of the risks of certain treatment is meritless as no staff or employee of DeWitt recommended any treatment to decedent.

In support of its motion, DeWitt annexes the affirmation of Alexander E. Merkler, M.D. ("Dr. Merkler"), a physician board-certified in neurology and neurocritical care. Dr. Merkler opines that DeWitt properly treated decedent from August 20, 2013 to August 31, 2013. Specifically, Dr. Merkler contends that DeWitt was not obligated to contact Mt. Sinai to ascertain whether decedent had been on anti-hypertensive medication prior to her discharge, or verify the accuracy of Mt. Sinai's discharge summary, especially where decedent appeared to be in stable condition. Dr. Merkler points out that decedent's Mt. Sinai discharge medication list did not include any anti-hypertensive medication, and that decedent's blood pressure readings of 135/70 and 140/70 upon admission at DeWitt were within normal limits given decedent's "characteristics." As such, Dr. Merkler concludes that DeWitt was not required to start decedent on anti-hypertensive medication given decedent's normal blood readings.

In Dr. Merkler's opinion, it was proper for NP Silverstein to perform decedent's initial admission documentation since NP Silverstein discussed all pertinent findings with Dr. Klein, the attending physician who signed off on NP Silverstein's assessment and plan. Dr. Merkler also asserts that NP Silverstein properly discontinued Heparin, and continued decedent on aspirin daily on August 21, 2013 to prevent against a secondary stroke. According to Dr. Merkler, given Dr. Ferriter's recommendation that decedent be out of bed and fully weight bearing, NP Silverstein properly discontinued Heparin per DeWitt's common practice for mobile patients. Similarly, Dr.

[14] Dr. Ferriter's first name has not been identified in the records.

Merkler submits that the standard of care called for the administration of aspirin for non-bedbound patients following an ischemic stroke to prevent a secondary stroke. In that regard, Dr. Merkler concludes that because decedent was mobile during her admission at DeWitt, it was not a departure from the standard of care to discontinue Heparin as an anticoagulant since aspirin was continued.

Dr. Merkler further opines that given decedent's secondary diagnosis of hypertension at Mt. Sinai, NP Silverstein properly monitored decedent's blood pressure during her admission at DeWitt. Moreover, Dr. Merkler avers that the failure to monitor decedent's blood pressure more frequently was not a deviation from the standard of care as decedent's blood pressure was stable.

Similarly, Dr. Merkler opines that DeWitt properly monitored decedent's blood pressure daily, except for August 25, 2013. According to Dr. Merkler, DeWitt's policy was to author nursing progress notes only if there was a change in a patient's condition, however, there was no evidence that decedent's blood pressure was "anything outside of normal limits"[15] between August 23, 2013 and August 26, 2013, or that decedent's condition changed in a "clinically significant" manner from August 26, 2013 to August 30, 2013. As such, Dr. Merkler concludes that although DeWitt did not document decedent's blood pressure values for a few days, DeWitt nonetheless checked decedent's blood pressure, which comported with acceptable practice.

Additionally, Dr. Merkler opines that DeWitt properly treated decedent's back pain. Dr. Merkler notes that Dr. Ferriter properly examined decedent upon her admission on August 20, 2013, DeWitt put a plan in place, and decedent underwent daily physical therapy. Dr. Merkler also maintains that DeWitt appropriately treated decedent's chronic lower back pain with ibuprofen and acetaminophen. According to Dr. Merkler, the use of NSAIDs was not contraindicated as there is no known association between NSAIDs and an increased risk of a hemorrhagic stroke. Dr.

[15] Dr. Merkler notes that decedent's blood pressure readings were within normal limits for a patient with decedent's characteristics and history.

Merkler also emphasizes that while the administration of aspirin could exacerbate the effects of a potential hemorrhagic stroke, the standard of care required the continued use of aspirin as prophylaxis against a secondary ischemic event for a patient who was one-month post-ischemic stroke. By that same virtue, Dr. Merkler concludes that discontinuing aspirin at that stage would have been a departure from accepted practice.

Dr. Merkler also opines that it was not a departure from the standard of care to not have a physician examine decedent until August 26, 2013. Dr. Merkler observes that decedent's blood pressure was within normal limits, and there were no clinical indications of distress that required a change in decedent's care plan.

Similarly, Dr. Merkler opines that DeWitt did not depart from the standard of care by not performing additional work-up on August 31, 2013 since decedent was not exhibiting any acute changes in her condition. In that regard, Dr. Merkler points out that while decedent exhibited some signs of forgetfulness on the morning of August 31, 2013, this was not an acute change in her condition as a nursing note had previously documented that decedent exhibited forgetfulness on August 23, 2013. Dr. Merkler also posits that when decedent was stiffening and verbally non-responsive later on August 31, 2013, DeWitt properly called 911, and instituted a full code. Dr. Merkler further notes that EMS arrived promptly, and CPR was performed continuously for over 20 minutes before decedent was intubated and brought to Lenox Hill.

In Dr. Merkler's opinion, DeWitt did not cause decedent's hemorrhagic stroke on August 31, 2013. According to Dr. Merkler, decedent's alleged period of uncontrolled hypertension from August 23, 2013 to August 30, 2013 could not have caused her stroke. Rather, Dr. Merkler maintains that an intracerebral hemorrhage like the one decedent suffered is most closely related to patients with longstanding issues with hypertension. In that regard, Dr. Merkler highlights that

decedent had been diagnosed with hypertension for at least four years, and was not taking any hypertensive medication prior to her admission at Mt. Sinai in July of 2013.

DeWitt also annexes the affirmation of Jeanine Frumenti, RN ("RN Frumenti"). Because RN Frumenti's affirmation is nearly identical to that of Dr. Merkler, the substance of RN Frumenti's affirmation will not be duplicated in this section. Rather, the portions of RN Frumenti's opinions that differ from the opinions of Dr. Merkler will be summarized below.[16]

Finally, DeWitt annexes the affirmation of Marie Lamour ("Ms. Lamour"), the current director of Nursing at Upper East Side Rehabilitation & Nursing Center ("UES"), previously known as DeWitt. Ms. Lamour asserts that upon conducting a review of decedent's chart, DeWitt provided plaintiff with a complete copy of decedent's chart. Ms. Lamour also states that in August of 2013, DeWitt's common practice was to generate a nursing note for each shift during the first three days of a patient's admission, and once the patient's condition was stable, the nursing staff would not author a nursing progress note unless there was a clinically significant change in the patient's condition, or if a clinical event occurred.

In that regard, Ms. Lamour attests that DeWitt did not have a policy or regulation in place in August of 2013 that required nursing staff to produce daily progress notes for patients admitted for long-term rehabilitation like decedent. According to Ms. Lamour, based on decedent's medical chart, decedent's blood pressure was monitored daily as ordered, and the fact that there may not be an entry for a particular day does not mean that decedent's blood pressure was not monitored.

[16] RN Frumenti opines that DeWitt was not obligated to contact Mt. Sinai to ascertain if decedent had been on anti-hypertensive medication prior to her discharge since Mt. Sinai's medication orders showed that losartan had been discontinued on August 19, 2013, a day prior to decedent's discharge. RN Frumenti also opines that DeWitt diligently documented decedent's complaints of pain and its administration of acetaminophen and ibuprofen per standing orders. RN Frumenti further asserts that a sub-acute rehabilitation facility is not obligated to document the "actual vital sign readings" when an order is placed to monitor a patient's vital signs.

Notably, Ms. Lamour underscores that the nurse's initials from August 24, 2013 to August 31, 2013 indicate that decedent's blood pressure was within normal limits on those days.

V. Plaintiff's Opposition

In opposition to NP Silverstein's motion, plaintiff argues that Dr. Goldberg failed to consider decedent's history of stroke, decedent's blood pressure of 195/70 upon admission at DeWitt, and the fact that DeWitt's order to monitor decedent's blood pressure terminated prematurely on August 25, 2013.

In opposition to Dr. Klein's motion, plaintiff argues that Dr. Garbitelli failed to establish his expertise in treating post-stroke patients with a history of hypertension in a sub-acute rehabilitation setting.[17] Plaintiff also asserts that there is no evidence to support Dr. Garbitelli's statement that DeWitt's records "indicate that the order for daily blood pressure checks were carried out from August 17, 2013 through August 26, 2013" since there are no blood pressure values recorded on August 24, 2013 or August 25, 2013. Similarly, plaintiff notes that while Dr. Garbitelli claims that decedent's "cardiac arrest was likely precipitated by a seizure," Dr. Garbitelli ignores decedent's second stroke, which "precipitated" what he characterizes as a "seizure."

In support of her opposition against all moving defendants, plaintiff annexes the affirmation of a physician[18] board-certified in critical care medicine and pulmonary medicine.[19]

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[17] The court disagrees. Dr. Garbitelli's board-certification in internal medicine sufficiently establishes his expertise to render an opinion in this matter (*see, Lopez v. Gem Gravure Co.*, 50 A.D.3d 1102, 1103 [2d Dept. 2008] ["An expert is qualified to render an opinion if he or she is 'possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the information imparted or the opinion is reliable.'"]; *Enu v. Sobol*, 208 A.D.2d 1123, 1125 [3d Dept. 1994] ["There is no requirement that the expert be a specialist in the same field of medicine as the accused."]). Accordingly, the court will consider Dr. Garbitelli's affirmation in the decision herein.

[18] As plaintiff has redacted the name of her expert, the expert will be referred to as "plaintiff's expert."

[19] Plaintiff's expert concedes that Mt. Sinai successfully achieved a balance between decedent's blood pressure by frequently checking decedent's blood pressure and by using IV medications such as nicardipine.

In plaintiff's expert's opinion, Mt. Sinai deviated from the standard of care by abruptly discontinuing losartan on August 19, 2013, which proximately caused decedent's hemorrhagic stroke on August 31, 2013 and subsequent death. According to plaintiff's expert, a patient with hypertension can have a normal blood pressure for a few days, and then experience a sudden spike. As a result, plaintiff's expert explains that blood pressure control is essential in a post-ischemic stroke patient with a history of hypertension, such as decedent, because uncontrolled hypertension is a competent producing cause of the development of a hemorrhagic stroke. Plaintiff's expert elaborates that there is a higher risk for uncontrolled hypertension to cause another stroke in a post-stroke patient.

In that regard, plaintiff's expert posits that Dr. Karafin departed from the standard of care by allowing the order of losartan to expire on August 18, 2013 without renewal. Plaintiff's expert also maintains that while Drs. Karafin and Avolio had a duty to supervise their staff, they failed to ensure that the order of losartan was continued throughout decedent's admission at MSAIR. Similarly, plaintiff's expert submits that Mt. Sinai's staff failed to realize that decedent had not been given losartan on August 19, 2013, and failed to administer the same.

Plaintiff's expert also opines that Mt. Sinai failed to have a properly "signed medication reconciliation" that included anti-hypertensive medication, and failed to order, prescribe, and communicate decedent's need for the same upon decedent's transfer to DeWitt. Plaintiff's expert notes that when decedent was transferred to DeWitt on August 20, 2013, Mt. Sinai did not inform DeWitt that decedent was to receive losartan or any other anti-hypertensive medication. According to plaintiff's expert, a healthcare provider cannot "blindly" print a list of current medications

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Plaintiff's expert also asserts that it was reasonable for Mt. Sinai to increase decedent's dose of enalapril. Plaintiff's expert further avers that Dr. Karafin reasonably discontinued enalapril when decedent developed a cough, and substituted losartan as an anti-hypertensive agent. Accordingly, Mt. Sinai is entitled to summary judgment as to these claims.

without reviewing a patient's diagnoses and medications. Rather, plaintiff's expert opines that Mt. Sinai was required to review decedent's medications in conjunction with her diagnoses prior to compiling a list of discharge medications. As such, plaintiff's expert underscores that had Mt. Sinai performed a proper "medication reconciliation," Mt. Sinai would have discovered that the order for losartan had expired, and would have placed a new order. However, plaintiff's expert concludes that based on decedent's history of hypertension and clinical condition at that time, Mt. Sinai's conduct was inappropriate, and proximately caused decedent's stroke and subsequent death.

Additionally, despite conceding that Dr. Klein and NP Silverstein reasonably relied on Mt. Sinai's medication transfer summary, plaintiff's expert opines that Dr. Klein and NP Silverstein should have realized decedent's need for anti-hypertensive medication even in the absence of a transfer order, and should have ordered and administered the same. According to plaintiff's expert, a patient who has recently recovered from a stroke with a history of hypertension requires maintenance of his/her blood pressure with anti-hypertensive medication. In that regard, plaintiff's expert submits that had Dr. Klein and NP Silverstein performed even a cursory evaluation of decedent's Mt. Sinai's records, or called decedent's physicians at Mt. Sinai to clarify why there was no order for anti-hypertensive medication, decedent's death could have been avoided.

Plaintiff's expert further opines that DeWitt departed from the standard of care by failing to check decedent's blood pressure as of August 24, 2013.[20] Plaintiff's expert contends that DeWitt should have checked decedent's blood pressure at least once daily based on decedent's history of hypertension and stroke. However, plaintiff's expert notes that while NP Silverstein's ordered daily blood pressure monitoring for 30 days, and although DeWitt's nursing staff was responsible

[20] Plaintiff's expert concedes that DeWitt checked decedent's blood pressure at least daily during her first four days at DeWitt (August 20-23, 2013), which remained at an acceptable level. Plaintiff's expert also acknowledges that Dr. Klein checked decedent's blood pressure on August 26, 2013.

for carrying out this order, DeWitt ignored NP Silverstein's order after four days. According to plaintiff's expert, had DeWitt's nursing staff monitored decedent's blood pressure as ordered, they would have known when decedent developed an elevated blood pressure, and administered anti-hypertensive medication in time to prevent her hemorrhagic stroke. Likewise, plaintiff's expert posits that Dr. Klein and NP Silverstein's failure to ensure that DeWitt's staff complied with their orders departed from the standard of care, and proximately caused decedent's injuries.[21]

Similarly, plaintiff's expert opines that DeWitt failed to notify Dr. Klein and/or NP Silverstein about the severity of decedent's back pain. Plaintiff's expert also submits that Dr. Klein failed to appreciate the severity of decedent's back pain on August 26, 2013, and failed to place an order for more frequent blood pressure monitoring in response to decedent's pain. Plaintiff's expert highlights that because back pain severe enough to require multiple doses of medicine is known to increase a patient's blood pressure, the development of decedent's lower back pain on August 25, 2013 "would have" caused a rise in decedent's blood pressure. However, plaintiff's expert notes that DeWitt did not check decedent's blood pressure at that time.

Plaintiff's expert also highlights that while Dr. Klein's August 26, 2013 note indicates that decedent's blood pressure was in an acceptable range, the note is not timed, and therefore, decedent's blood pressure could have been checked while she taking Motrin. In that regard, plaintiff's expert avers that once decedent's back pain became severe enough to require medication, DeWitt should have notified Dr. Klein and/or NP Silverstein, and Dr. Klein and/or NP Silverstein should have ordered more frequent monitoring given decedent's history of hypertension. As such, plaintiff's expert reiterates that had defendants checked decedent's blood

[21] Plaintiff's expert notes that because Dr. Klein maintains supervisory authority over NP Silverstein, Dr. Klein is liable for NP Silverstein's deviations from the standard of care.

pressure more frequently, it is more likely than not that they would have discovered decedent's elevated blood pressure levels, and administered anti-hypertensive medication accordingly.

Finally, plaintiff's expert asserts that Dr. Elkind's opinion that decedent did not suffer a second stroke when she presented to Lenox Hill on August 31, 2013 is incorrect. Plaintiff's expert notes that the blood seen on decedent's Lenox Hill CT scan is evidence of a hemorrhagic stroke.

Similarly, plaintiff's expert maintains that contrary to Dr. Elkind's opinion that Mt. Sinai appropriately discontinued losartan on August 18, 2013 because decedent's blood pressure was normotensive for many days, it is not the standard of care to take a patient off anti-hypertensive medication to see how the patient reacts, and then discharge the patient the next day. According to plaintiff's expert, this would make monitoring the patient's reaction to the cessation of the medication impossible. Plaintiff's expert also observes that decedent's blood pressure was high prior to receiving anti-hypertensive medication, and was subsequently normalized with anti-hypertensive medication, including losartan, which is proof that decedent needed losartan.

Lastly, plaintiff's expert submits that Dr. Elkind's opinion that decedent's blood pressure of 70/42 upon presenting to Lenox Hill is evidence that decedent was not hypertensive is unfounded. Rather, plaintiff's expert avers that decedent's blood pressure was "that low" because she had suffered a hemorrhagic stroke with consequent hemodynamic compromise (i.e. decedent was near death).

In further support of her opposition, plaintiff annexes the affirmation of Sheri Millman-Mcconlogue, RN ("RN Millman-Mcconlogue"). RN Millman-Mcconlogue opines that DeWitt's failure to check and/or or record decedent's blood pressures values daily deviated from the standard of care. RN Millman-Mcconlogue notes that decedent's DeWitt chart does not contain any notes, observations, or blood pressure readings from August 23, 2013 to August 31, 2013.

According to RN Millman-Mcconlogue, the standard of care for a patient in a sub-acute rehabilitation facility is different from a patient in long-term nursing care. As such, RN Millman-Mcconlogue posits that because decedent was admitted at DeWitt for sub-acute rehabilitation, DeWitt was required to create daily progress notes that includes, *inter alia*, decedent's vital signs, mental status, and changes in condition.

Moreover, RN Millman-Mcconlogue submits that taking and documenting a patient's daily blood pressure value is integral to a patient's care, especially for a post-stroke patient with a history of hypertension. According to RN Millman-Mcconlogue, this allows medical caretakers to assess trends in the patient's blood pressure to determine whether anti-hypertensive medication is needed. Therefore, RN Millman-Mcconlogue posits that DeWitt should have monitored and recorded decedent's vital signs given NP Silverstein's order and decedent's history of a recent ischemic stroke and hypertension.

Likewise, RN Millman-Mcconlogue opines that DeWitt departed from accepted practice by allowing the nurse's aides to determine whether a patient's vital signs are abnormal since the normalcy of a patient's vital signs is a medical determination made in conjunction with the patient's past medical history and clinical presentation.

VI. NP Silverstein's Reply

In reply, NP Silverstein challenges the sufficiency of plaintiff's expert's affirmation based on the redaction of certain sections. NP Silverstein also challenges plaintiff's expert's qualifications.[22]

[22] Contrary to NP Silverstein's argument, plaintiff's expert's board-certification in critical care medicine and pulmonary medicine, and other experiences and accolades related to the practice of critical care and pulmonary medicine are sufficient to qualify plaintiff's expert to render an opinion in this matter (*see, Lopez*, 50 A.D.3d at1103, *supra*; *Enu*, 208 A.D.2d at 1125, *supra*). Accordingly, the court will consider plaintiff's expert's affirmation in the decision herein.

Additionally, NP Silverstein argues that contrary to plaintiff's assertion, decedent's blood pressure was 135/70, not 195/70, upon her admission at DeWitt. NP Silverstein also asserts that it would have been "absurd" for her to order anti-hypertensive medication over the orders of Dr. Klein, Dr. Ferriter, and Mt. Sinai. NP Silverstein further notes that plaintiff failed to identify which anti-hypertensive medication(s) should have been prescribed.

Finally, NP Silverstein avers that contrary to plaintiff's argument that she discontinued decedent's daily blood pressure checks on August 25, 2013, decedent's daily blood pressure checks were not terminated until August 31, 2013 when decedent was discharge from DeWitt. NP Silverstein also notes that DeWitt's nurses understood that they were to perform daily blood pressure checks from August 21, 2013 to September 11, 2013, 11 days after decedent's discharge.[23]

VII. Mt. Sinai, Dr. Avolio, and Dr. Karafin's ("Mt. Sinai") Reply

In reply, Mt. Sinai argues that because plaintiff's opposition only asserts that Mt. Sinai departed from the standard of care by allegedly discontinuing losartan, and failing to restart decedent on the same, plaintiff's remaining claims against Mt. Sinai must be dismissed.

Mt. Sinai also argues that plaintiff ignores the fact that Dr. Avolio placed an order for losartan with a specific end-date,[24] and although losartan was ordered for a two-week period, other anti-hypertensive measures were in place during decedent's admission at Mt. Sinai, including a cardiac diet and physical therapy. Mt. Sinai further reiterates that because decedent had been normotensive for 17 days while on losartan, it was appropriate to allow the order for losartan to

[23] NP Silverstein also attaches the affirmations of Dr. Merkler and RN Frumenti in further support of her motion for summary judgment.
[24] Mt. Sinai notes that because Dr. Avolio's initial assessment noted a discharge date of August 20, 2013, Dr. Avolio did not contemplate that the order for losartan would continue beyond that time since decedent would be evaluated at the end of the two-weeks to determine whether losartan should be continued.

expire while continuing to decedent on a cardiac diet and physical therapy. Mt. Sinai also emphasizes that decedent's blood pressure was checked numerous times daily.

In that regard, Mt. Sinai highlights that decedent never had a spike in blood pressure at any time between the discontinuance of the losartan and the date of her discharge from Mt. Sinai. Mt. Sinai also notes that decedent's blood pressure was normotensive upon her arrival at DeWitt, and that decedent's blood pressure was not hypertensive between August 6, 2013 and August 31, 2013 when she was admitted to Lenox Hill. As such, Mt. Sinai reiterates that decedent did not require anti-hypertensive medication despite plaintiff's assumption that losartan, as opposed to other anti-hypertensive measures, was the only way to control decedent's blood pressure.

Additionally, Mt. Sinai argues that plaintiff's expert's assertion that Mt. Sinai would have restarted losartan had it realized that the order had been discontinued is speculative. Similarly, Mt. Sinai asserts that plaintiff's contention that "a patient with hypertension can have a normal blood pressure over the course of a few days, but then suddenly have a spike in blood pressure," is vague, speculative, and conclusory. In that regard, Mt. Sinai avers that plaintiff's expert does not state when Mt. Sinai should have discontinued losartan, or why decedent needed losartan despite being normotensive. Mt. Sinai also posits that there is no evidence that decedent suffered from uncontrolled hypertension after losartan was discontinued.

Moreover, Mt. Sinai argues that even if decedent's "stroke were hemorrhagic as a result of 'uncontrolled hypertension,'" that condition did not exist at Mt. Sinai or at DeWitt. Finally, Mt. Sinai contends that plaintiff's expert failed to show that he or she is qualified to interpret decedent's CT scans as plaintiff's expert is board-certified in critical care and pulmonary medicine.[25]

[25] The court disagrees for the same reasons outlined above (*see*, Footnote 24, *supra*).

VIII. Dr. Klein's Reply

In reply, Dr. Klein asserts that plaintiff does not define hypertension, or specify the threshold at which anti-hypertensive medication would be warranted. Similarly, Dr. Klein maintains that plaintiff's expert does not identify what decedent's blood pressure should have been, or what medication and dosage should have been recommended.

Dr. Klein also underscores that decedent's DeWitt records show that decedent had normal blood pressure readings with no evidence of hypertension while under his care.[26] As such, Dr. Klein submits that plaintiff's claim that he should have contacted Mt. Sinai to inquire about decedent's hypertension is inconsequential.

Dr. Klein further argues that plaintiff's expert cannot simultaneously argue that decedent's pain was managed in a way that "masked" her "underlying hypertension," and that decedent's pain was not managed, which led to her development of hypertension and related injuries. Likewise, Dr. Klein contends that there is no evidence that decedent's pain was managed on August 26, 2013, but not on August 31, 2013. Instead, Dr. Klein notes that decedent received pain medication on August 31, 2013, and that plaintiff's expert acknowledged that decedent's back pain was managed with Motrin and/or Tylenol.

Additionally, Dr. Klein posits that while plaintiff asserts that he failed to ensure that his orders were carried out, he did not have an employer-employee relationship with DeWitt, or any supervisory responsibility to ensure that DeWitt followed his orders.

Finally, Dr. Klein argues that plaintiff failed to establish any link between decedent's alleged hypertension and subsequent death. Dr. Klein reiterates that the presence of a small amount

[26] Dr. Klein notes that while plaintiff speculates that the absence of documented blood pressure values indicates that decedent was hypertensive, decedent's DeWitt's records show that decedent had normal blood pressure readings.

of blood in decedent's brain is not indicative of a hemorrhage secondary to hypertension. Rather, Dr. Klein highlights Dr. Elkind's opinion that a small amount of bleeding occurred in the area of decedent's brain that was already damaged by her prior stroke.

IX. DeWitt's Reply

In reply, DeWitt argues that there are no statutory guidelines/regulations that require daily nursing progress notes for patients in short-term rehabilitation facilities since individual facilities set forth their policies for documentation. DeWitt also asserts that because decedent's blood pressure was stable during her first three days of admission, DeWitt's policy only required progress notes if there was a clinically significant change in her condition.

DeWitt further argues that contrary to plaintiff's assertion, licensed nurses could determine the normalcy of a patient's blood pressure using the threshold guidelines published by the American College of Cardiology ("ACA") and the American Heart Association ("AHA"). Similarly, DeWitt submits that plaintiff assumes that DeWitt allowed the nurse's aides to determine whether a patient's vital signs were abnormal, however, there is no evidence that decedent's vital signs were "exclusively taken" by the nurse's aides. Likewise, DeWitt underscores that while plaintiff speculates that decedent's back pain beginning on August 25, 2013 caused a rise in her blood pressure, decedent's blood pressure on August 23, 2013 was 120/70 in the morning and 128/76 in the evening. DeWitt also reiterates that decedent experienced moderate back pain (4/10) on August 24, 2013 and August 25, 2013, which completely resolved thereafter.

Additionally, DeWitt argues that contrary to plaintiff's assertion that the nurses failed to notify NP Silverstein or Dr. Klecin as to decedent's complaints of pain, there were standing orders in place to treat decedent's back pain. DeWitt also notes that decedent's moderate pain was not a significant change in her condition so as to require the nurses to notify NP Silverstein or Dr. Klein.

Rather, DeWitt reemphasizes that in order for a patient's hypertension to be related to pain, it would require "significant, excruciating, and potentially life claiming, threatening pain."

DeWitt further asserts that plaintiff speculates that during the four days that DeWitt did not document decedent's blood pressure values, decedent suddenly, and without explanation, began experiencing uncontrolled hypertension despite being normotensive for a week. In that regard, DeWitt notes that because the half-life of losartan is two hours, decedent's lack of anti-hypertensive medication would have caused decedent to develop hypertension during her first few days at DeWitt; however, decedent had normal blood pressure readings from August 20, 2013 to August 23, 2013, and on August 26, 2013. DeWitt further underscores that there was no evidence that decedent had uncontrolled hypertension, and even if decedent had uncontrolled hypertension during the four days that DeWitt did not document decedent's blood pressure values, this short period of uncontrolled hypertension could not have caused decedent's stroke.

In further support of its reply, DeWitt annexes the supplemental affirmations of Dr. Merkler and RN Frumenti. Dr. Merkler reiterates that contrary to plaintiff's claim, decedent's blood pressure upon admission at DeWitt was 135/70, not 195/70. Dr. Merkler notes that Dr. Ferriter's progress note documented that decedent's blood pressure was 120/70 on August 20, 2013, and that a nursing progress note approximately nine hours later recorded a blood pressure of 140/70. As such, Dr. Merkler posits that plaintiff does not explain how decedent could have presented with a blood pressure of 195/70, but have two normal blood pressure readings within nine hours without taking any anti-hypertensive medication.

Similarly, Dr. Merkler asserts that while plaintiff states that decedent's "lower back pain starting on August 25, 2013, would have caused a rise in her blood pressure," Dr. Ferriter evaluated decedent on August 20, 2013 for back pain, and ordered acetaminophen and ibuprofen for her pain.

Dr. Merkler also points out that decedent had back pain prior to August 25, 2013 as she had received acetaminophen on the morning of August 23, 2013 and August 24, 2013, and ibuprofen in the afternoon of August 24, 2013. Dr. Merkler further highlights that following the administration of acetaminophen and ibuprofen, decedent's pain level was 0/10. Additionally, Dr. Merkler notes that decedent had been taking losartan at Mt. Sinai from August 3, 2013 to August 19, 2013, for which back pain is a known side effect. As such, Dr. Merkler concludes that decedent's pain did not warrant further intervention on August 24, 2013 or August 25, 2013.

Additionally, Dr. Merkler opines that contrary to plaintiff's argument that the discontinuance of losartan proximately caused decedent's hemorrhagic stroke on August 31, 2013, the 50 mg dose of losartan that decedent received on August 19, 2013 would have been eliminated from her bloodstream within one or two days since losartan has a half-life of two hours. In that regard, Dr. Merkler explains that decedent's blood pressure would have "appeared as uncontrolled" early in her admission at DeWitt, however, plaintiff's expert does not dispute that decedent's blood pressure was controlled during her first four days at Dewitt.[27]

In rebutting RN Millman-Mcconologue's opinions, RN Frumenti asserts that she cannot locate any regulations that require daily nursing progress notes for patients in a short-term rehabilitation facility, and that RN Millman-Mcconologue fails to cite any statutory requirements for the same. In that regard, RN Frumenti contends that policies for nursing documentation are organization specific, and therefore, DeWitt did not depart from the standard of care by maintaining a policy that requires nurses to only document significant changes in a patient's condition after the first three days of admission.

[27] The remainder of Dr. Merkler's affirmation summarizes his previous opinions.

RN Frumenti also opines that the determination as to the normalcy of a patient's blood pressure is not exclusively a "medical judgment call." Rather, RN Frumenti notes that the "nursing process," as defined by the American Nurses Association, includes an assessment of the patient, diagnosis, outcome identification, planning, implementation, and evaluation. As such, RN Frumenti concludes that licensed nurses can use the ACA and AHA guidelines to determine the normalcy of a patient's blood pressure.

Finally, RN Frumenti avers that DeWitt's nurses followed Dr. Ferriter and NP Silverstein's orders by administering acetaminophen and ibuprofen on August 23-25, 2013.[28]

DISCUSSION

To prevail on summary judgment in a medical malpractice case, a physician must demonstrate that he did not depart from accepted standards of practice or that, even if he did, he did not proximately cause the patient's injury (*Roques v. Noble*, 73 A.D.3d 204, 206 [1st Dept. 2010]). In claiming treatment did not depart from accepted standards, the movant must provide an expert opinion that is detailed, specific and factual in nature (*see e.g.*, *Joyner-Pack v. Sykes*, 54 A.D.3d 727, 729 [2d Dept. 2008]). The opinion must be based on facts in the record or personally known to the expert (*Roques*, 73 A.D.3d at 207). The expert cannot make conclusions by assuming material facts which lack evidentiary support (*id.*). The defense expert's opinion should state "in what way" a patient's treatment was proper and explain the standard of care (*Ocasio-Gary v. Lawrence Hosp.*, 69 A.D.3d 403, 404 [1st Dept. 2010]). Further, it must "explain 'what defendant did and why'" (*id*. *quoting Wasserman v. Carella*, 307 A.D.2d 225, 226 [1st Dept. 2003]).

[28] The remainder of RN Frumenti's affirmation summarizes her previous opinions.

Once defendant makes a *prima facie* showing, the burden shifts to plaintiff "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 Hosp.*, 68 NY2d 320, 324 [1986]). To meet that burden, plaintiff must submit an expert affidavit attesting that defendant departed from accepted medical practice and that the departure proximately caused the injuries (*see, Roques*, 73 AD3d at 207). "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions" (*Elmes v. Yelon*, 140 A.D.3d 1009 [2nd Dept 2016] [citations and internal quotation marks omitted]). Instead, the conflicts must be resolved by the factfinder (*id.*).

As a preliminary matter, plaintiff has submitted an unredacted copy of her expert's affirmation to the court, which includes the expert's identity, signature, and qualifications. Following an *in camera* inspection, the court is satisfied with plaintiff's expert's affirmation. Accordingly, defendants' request to disregard plaintiff's expert's affirmation is denied (*see, Turi v. Birk*, 118 A.D.3d 979, 980 [2d Dept. 2014]; *Marano v. Mercy Hosp.*, 241 A.D.2d 48, 50 [2d Dept. 1998]; *Carrasquillo v. Rosencrans*, 208 A.D.2d 488, 488 [2d Dept. 1994]).

I. NP Silverstein

In response to NP Silverstein's *prima facie* showing, plaintiff raises triable issues of fact sufficient to preclude summary judgment. For example, the parties disagree as to whether NP Silverstein had a duty to order and administer anti-hypertensive medication to decedent upon her admission at DeWitt on August 20, 2013. Notably, NP Silverstein contends that absent a corresponding note indicating the need for anti-hypertensive medication on decedent's transfer document, anti-hypertensive medication was not required based on decedent's history of hypertension alone. Plaintiff, on the other hand, avers that NP Silverstein should have realized

decedent's need for anti-hypertensive medication, even in the absence of a transfer order, and ordered and administered the same. In that regard, contrary NP Silverstein's assertions that decedent's blood pressure was within normal limits upon her admission, and that the proper course of treatment at that time was to monitor decedent's blood pressure rather than "immediately" prescribe anti-hypertensive medication, plaintiff maintains that a patient who has recently recovered from a stroke with a history of hypertension requires maintenance of his/her blood pressure with anti-hypertensive medication. Because these issues cannot be resolved by the facts before the court, summary judgment is denied.

Similarly, plaintiff raises an issue of fact as to whether NP Silverstein failed to ensure that DeWitt's nursing staff complied with her orders, and whether such departure caused or contributed to decedent's alleged injuries. While plaintiff argues that NP Silverstein's failure to ensure that DeWitt's nursing staff complied with her orders departed from the standard of care, and proximately caused decedent's stroke and subsequent death, NP Silverstein submits that DeWitt's nurses understood that they were to perform daily blood pressure checks from August 21, 2013 to September 11, 2013. In further rebutting plaintiff's allegation that she negligently discontinued decedent's daily blood pressure checks on August 25, 2013, NP Silverstein underscores that decedent's daily blood pressure monitoring was not terminated until August 31, 2013 when decedent was transferred to Lennox Hill. Accordingly, there are triable issues of fact here sufficient to preclude summary judgment.

Finally, there is a triable issue of fact as to whether NP Silverstein's acts/omissions caused or contributed to decedent's alleged injuries. Notably, NP Silverstein contends that she properly monitored decedent's blood pressure during her admission at DeWitt, and that the alleged failure to monitor decedent's blood pressure more frequently was not a departure from the standard of

care as decedent's blood pressure was stable. Plaintiff, however, proffers that decedent's death could have been avoided had NP Silverstein evaluated decedent's Mt. Sinai's records, called decedent's physicians at Mt. Sinai to clarify why there was no order for anti-hypertensive medication, and/or ordered and administered anti-hypertensive medication to decedent. By contrast, NP Silverstein argues that it would have been "absurd" for her to order anti-hypertensive medication over the orders of Dr. Klein, Dr. Ferriter, and Mt. Sinai. Because these issues cannot be resolved by the facts before the court, summary judgment is denied as to NP Silverstein.

II. Mt. Sinai, Dr. Avolio, and Dr. Karafin ("Mt. Sinai")

As plaintiff has only attempted to raise a triable issue of fact as to Mt. Sinai's alleged discontinuance of losartan, plaintiff's remaining claims against Mt. Sinai must be dismissed. Specifically, plaintiff fails to address or rebut Mt. Sinai's arguments that Mt. Sinai 1) properly maintained decedent's blood pressure in a permissive hypertension range, consistently checked decedent's blood pressure, and administered anti-hypertensive medications as needed, 2) properly ordered and administered labetalol, 3) properly changed decedent's medication order on July 25, 2013 to reflect an upper systolic pressure limit of 200, 4) properly planned to lower decedent's blood pressure outside the range of permissive hypertension following decedent's transfer to MSAIR on July 30, 2013, 5) properly administered enalapril every 12 hours upon decedent's admission to MSAIR, and 6) properly switched decedent from enalapril to losartan after decedent complained of a cough. Accordingly, these claims are dismissed.

Similarly, plaintiff does not address or dispute Mt. Sinai's assertions that 1) it properly treated decedent's back pain with ibuprofen, diazepam, and valium, and 2) that the administration of Tylenol and NSAIDs, including ibuprofen and aspirin, was proper, and did not cause or

contribute to decedent's cardiac arrest or stroke on August 31, 2013. Accordingly, these claims are dismissed.

Likewise, as plaintiff has conceded that Mt. Sinai properly administered TPA upon decedent's admission at Mt. Sinai, plaintiff's claims with respect to the same, including any lack of informed consent claims regarding the administration of TPA, are dismissed.

Substantively, plaintiff has failed to raise a triable issue of fact with respect to Mt. Sinai's alleged discontinuance of losartan on August 19, 2013. Notably, while plaintiff avers that Mt. Sinai departed from the standard of care by allowing the order of losartan to expire on August 18, 2013, plaintiff does not demonstrate or explain why Mt. Sinai should have renewed the order for losartan. Indeed, plaintiff does not point to any evidence in decedent's medical records to show why Mt. Sinai should have continued decedent on anti-hypertensive medication, such as a high blood pressure, or any other clinical symptoms warranting the need for such medications (*see, e.g., DiMitri v. Monsouri*, 302 A.D.2d 420, 421 [2d Dept. 2003] [granting defendants summary judgment where plaintiff's expert's affirmation "merely stated in a conclusory fashion that the plaintiff's ulnar nerve was exposed to undue prolonged pressure as a result of being improperly positioned during surgery, without making specific factual references to the positioning of the plaintiff."]).

Rather, plaintiff merely asserts that there is a higher risk for uncontrolled hypertension to cause another stroke in a post-stroke patient, and that uncontrolled hypertension is a competent producing cause of the development of a hemorrhagic stroke in a post-stroke patient with a history of hypertension, such as decedent. However, plaintiff fails to apply these general textbook observations to the specific facts of this case, or compare them to decedent's medical condition and treatment (*see, id.; Shekhtman v. Savransky*, 154 A.D.3d 592, 593 [1st Dept. 2017] ["Liability

is not supported by an expert offering only conclusory assertions and mere speculation that the condition could have been discovered and successfully treated had the doctors not deviated from the accepted standard of medical practice."]; *Kaplan v. Hamilton Med. Assocs., P.C.*, 262 A.D.2d 609, 610 [2d Dept. 1999] [granting defendants summary judgment where plaintiff's expert "merely stat[ed] in conclusory terms that [defendants] should have diagnosed and treated his bacterial endocarditis sooner"]). To be sure, plaintiff does not point to any evidence in the record to show that decedent suffered from uncontrolled hypertension during her admission at Mt. Sinai, or that her alleged uncontrolled hypertension caused her to develop a hemorrhagic stroke. Accordingly, there are no triable issues of fact here sufficient to preclude summary judgment.

By contrast, it is undisputed that decedent's blood pressure did not elevate to a point of concern, and in need of intervention after losartan was discontinued. As such, plaintiff's assertion that "a patient" with hypertension can have a normal blood pressure over the course of a few days, but suddenly experience a spike, without any reference to decedent's specific blood pressure values, is conclusory, speculative, and insufficient to establish that Mt. Sinai departed from the standard of care, or proximately caused decedent's alleged injuries (*see, Grzelecki v. Sipperly*, 2 A.D.3d 939, 941 [3d Dept. 2003] [plaintiff failed to raise an issue of fact precluding summary judgment where plaintiff's expert affidavits "are speculative, conclusory and generalized"]; *Frye v. Montefiore Med. Ctr*., 70 A.D.3d 15, 24 [1st Dept. 2009]).

Similarly, plaintiff's argument that had Mt. Sinai performed a proper "medication reconciliation," Mt. Sinai would have discovered that the order for losartan had expired, and placed a new order is speculative. Indeed, there is no showing that Mt. Sinai would have placed a new order for losartan even if it had "discovered" that the prior order had expired (*see, e.g., Rodriguez v. Montefiore Med. Ctr.*, 28 A.D.3d 357, 357 [1st Dept. 2006] [granting summary judgment where

"plaintiff's expert offered only conclusory assertions and mere speculation that her cancer would have been discovered earlier and would not have spread if appellants had more aggressively pursued her, and expedited and tracked her follow-up visits more actively"]). By contrast, Mt. Sinai has sufficiently demonstrated that Dr. Avolio placed the order for losartan with a specific end-date as his initial assessment anticipated that decedent would be discharged on August 20, 2013. Accordingly, there are no triable issues of fact here sufficient to preclude summary judgment.

Likewise, while plaintiff avers that Mt. Sinai departed from the standard of care by failing to communicate decedent's need for anti-hypertensive medication upon decedent's transfer to DeWitt, there is no indication that DeWitt would have prescribed and/or administered losartan or any other anti-hypertensive medication to decedent during her admission at DeWitt (*see, Henry v. Duncan*, 169 A.D.3d 421, 421 [1st Dept. 2019]). Indeed, DeWitt opposes plaintiff's proposition by arguing that upon decedent's transfer to DeWitt on August 20, 2013, the plan was to monitor decedent's blood pressure daily, and not to immediately prescribe anti-hypertensive medication since decedent's blood pressure was within normal limits. Accordingly, plaintiff has failed to raise a triable issue of fact here sufficient to preclude summary judgment.

Moreover, plaintiff does not demonstrate that decedent's prognosis and outcome would have been different had Mt. Sinai ordered losartan on August 19, 2013 (*see, Schwartz v. Partridge*, 179 A.D.3d 963, 963 [2d Dept. 2020] ["Although the plaintiff's expert pointed to complications that arose during the decedent's IV therapy . . . he failed to set forth how either of the defendants could have prevented such complications or how the defendants were negligent in responding to those complications."]; *Biondi v. Behrman*, 149 A.D.3d 562, 565 [1st Dept. 2017] [granting defendants summary judgment where plaintiff's expert did not explain how pre-surgical testing

would have changed the result, and advanced only conclusory opinions that a specific infection was somehow the cause of her injuries]).

By contrast, Mt. Sinai has submitted ample and undisputed evidence that its decision to discontinue losartan comported with the standard of care since decedent no longer required anti-hypertensive medication. For instance, Mt. Sinai demonstrates that losartan was intentionally ordered for a two-week period, and that other anti-hypertensive measures were in place during decedent's admission at Mt. Sinai, including physical therapy and a cardiac diet. Not only does plaintiff fail to show why such measures were inadequate, but plaintiff also fails to address and/or refute Mt. Sinai's arguments that decedent was normotensive while on losartan, and that Mt. Sinai took additional measures to ensure that decedent remained normotensive once losartan was discontinued. Because plaintiff has failed to address or raise any triable issues of fact with respect to these claims, Mt. Sinai is entitled to judgment as a matter of law.

III. Dr. Klein

Plaintiff raises triable issues of fact sufficient to preclude summary judgment as to Dr. Klein. For example, contrary to plaintiff's claims that Dr. Klein should have realized decedent's need for anti-hypertensive medication even in the absence of a transfer order, and should have ordered/administered the same, Dr. Klein posits that decedent's DeWitt records revealed normal blood pressure values with no evidence of hypertension while under his care. In that regard, the parties' disagreement as to whether decedent's blood pressure was normal further supports denial of summary judgment, particularly in light of the inconsistent documentation of decedent's blood

pressure values at DeWitt.[29] Accordingly, there are triable issues of fact here sufficient to preclude summary judgment.

Additionally, while plaintiff maintains that Dr. Klein departed from the standard of care by failing to ensure that DeWitt's nursing staff complied with his orders, Dr. Klein underscores that he was a voluntary physician at DeWitt at the time he treated decedent, and did not have any supervisory responsibility to ensure that DeWitt followed his orders to monitor decedent's blood pressure. Because these issues cannot be resolved by the facts before the court, summary judgment is denied.

Similarly, contrary to Dr. Klein's contention that decedent's pain was properly managed on August 26, 2013, plaintiff asserts that Dr. Klein failed to appreciate the severity of decedent's back pain on August 26, 2013, and failed to place an order for more frequent blood pressure monitoring in response to decedent's pain. Dr. Klein, on the other hand, submits that plaintiff's expert acknowledged that decedent's back pain was managed with Motrin and/or Tylenol. Accordingly, there are triable issues of fact here sufficient to preclude summary judgment.

Significantly, while plaintiff underscores that Dr. Klein should have ordered more frequent blood pressure monitoring given decedent's history of hypertension, Dr. Klein emphasizes that there was nothing that he could have done to change decedent's outcome. In that regard, Dr. Klein maintains that decedent's cardiac arrest was neither predictable nor preventable since following a CVA, a patient is often at an increased risk for post-CVA seizures. Plaintiff, however, contends that while Dr. Klein's expert opines that decedent's "cardiac arrest was likely precipitated by a seizure," Dr. Klein's expert ignores decedent's second stroke. In rebutting plaintiff's argument,

[29] Dr. Klein's argument that decedent had normal pressure readings is properly called into question by the fact that there is no documentation of decedent's blood pressure values for August 24, 2013 or August 25, 2013 in decedent's records. As such, there is an issue of fact as to whether decedent was hypertensive on those days.

Dr. Klein avers that decedent's cardiac arrest was precipitated by a seizure, not a hemorrhagic stroke. Because these issues cannot be resolved by the facts before the court, summary judgment is denied as to Dr. Klein.

IV. DeWitt

Plaintiff also raises triable issues of fact sufficient to preclude summary judgment as to DeWitt. For example, there is a triable issue of fact as to whether DeWitt properly monitored decedent's blood pressure during her admission. Notably, while DeWitt asserts that it comported with accepted practice by monitoring decedent's blood pressure daily, except for August 25, 2013, plaintiff posits that DeWitt failed to check decedent's blood pressure as of August 24, 2013, except for August 26, 2013. Specifically, plaintiff argues that although NP Silverstein ordered daily blood pressure monitoring for 30 days, DeWitt's nursing staff ignored this order after four days as decedent's records do not contain any notes, observations, or blood pressure readings from August 23, 2013 to August 31, 2013. DeWitt, on the other hand, contends that its nursing staff properly checked decedent's blood pressure daily as ordered, and the fact that there may not be an entry within the records for a particular day does not mean that decedent's blood pressure was not monitored that day. Accordingly, there are triable issues of fact here sufficient to preclude summary judgment.

Moreover, there is a triable issue of fact as to whether DeWitt's documentation of decedent's blood pressure readings, or lack thereof, met the standard of care. For instance, DeWitt underscores that under its policy, the nursing staff was only required to author additional progress notes if there was a change in decedent's condition, however, there was no evidence that

decedent's blood pressure was "anything outside of normal limits"[30] between August 23, 2013 to August 26, 2013, or that decedent's condition changed in a "clinically significant" manner from August 26, 2013 to August 30, 2013. By contrast, plaintiff argues that DeWitt should have monitored and recorded decedent's blood pressure based on decedent's history of hypertension and a recent ischemic stroke. DeWitt, on the other hand, posits that there were no statutory guidelines or regulations requiring daily progress notes for patients in short-term rehabilitation facilities like decedent. Rather, DeWitt emphasizes that an individual facility like DeWitt may set forth its own policies for documentation. In rebutting DeWitt's policy, however, plaintiff underscores that had the DeWitt monitored decedent's blood pressure as ordered, it would have known when decedent developed hypertension, and administered anti-hypertensive medication accordingly.[31] Because these issues cannot be resolved by the facts before the court, summary judgment is be denied.

Furthermore, plaintiff raises a triable issue of fact as to whether DeWitt properly treated decedent's back pain. For instance, while DeWitt asserts that it properly treated decedent's chronic lower back pain with physical therapy, and acetaminophen and ibuprofen, plaintiff proffers that DeWitt departed from the standard of care by failing to notify Dr. Klein and/or NP Silverstein as to the severity of decedent's back pain. In plaintiff's view, decedent's lower back pain on August 25, 2013 "would have" caused a rise in decedent's blood pressure as back pain severe enough to require multiple doses of medicine is known to increase a patient's blood pressure. DeWitt, however, argues that decedent's moderate back pain was not a significant change in her condition so as to require the attention NP Silverstein or Dr. Klein. In that regard, contrary to plaintiff's

[30] Dr. Merkler notes that decedent's blood pressure readings were within normal limits for a patient with decedent's characteristics and history.
[31] While it is unclear whether decedent had an elevated blood pressure on the days that DeWitt did not record her blood pressure values, this issue further supports denial of summary judgment.

argument, DeWitt maintains that in order for hypertension to be related to pain, it would require "significant, excruciating, and potentially life claiming, threatening pain," however, decedent experienced moderate back pain on August 24, 2013 and August 25, 2013, which completely resolved thereafter. Accordingly, there are triable issues of fact here sufficient to preclude summary judgment.

However, as plaintiff has failed to address or rebut DeWitt's arguments with respect to plaintiff's claims for negligent supervision, negligent hiring, and lack of informed consent, these claims are dismissed.

Similarly, plaintiff has failed to address or dispute DeWitt's arguments that 1) NP Silverstein properly discontinued Heparin, 2) DeWitt did not depart from the standard of care by not having a physician examine decedent until August 26, 2013, and 3) DeWitt did not depart from the standard of care by not performing additional work-up on August 31, 2013. Accordingly, these claims are dismissed.

Finally, plaintiff's failure to raise a triable issue of fact as to whether DeWitt departed from the standard of care by allowing the nurse's aides to determine whether "a patient's" vital signs are abnormal warrants dismissal of this claim. Notably, plaintiff does not show how this alleged act constitutes a departure from the standard of care, or how such act/omission proximately caused decedent's alleged injuries. Accordingly, this claim is dismissed.

Based on the foregoing, it is hereby

ORDERED that Jessica Silverstein, FNP's motion for summary judgment is denied in its entirety; and it is further

ORDERED that Mount Sinai Beth Israel, Jock Avolio, M.D., and Felix Karafin, M.D.'s motion for summary judgment is granted; and it is further

ORDERED that the clerk is directed to enter judgment dismissing this case against Mount Sinai Beth Israel, Jock Avolio, M.D., and Felix Karafin, M.D.; and it is further

ORDERED that the caption is amended as follows:

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LISETTE NAZARIO, as Administrator of the Estate of
FRANCISCA CRUZ, Deceased, and LISETTE NAZARIO, Individually,

-v-

DEWITT REHABILITATION AND NURSING CENTER, INC; DANIEL
KLEIN, M.D., and JESSICA SILVERSTEIN, FNP.
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; and it is further

ORDERED that Daniel Klein, M.D.'s motion for summary judgment is denied in its entirety; and it is further

ORDERED that Dewitt Rehabilitation and Nursing Center, Inc.'s motion is granted in part; and it is further

ORDERED that the clerk is directed to enter judgment dismissing the aforementioned claims against Dewitt Rehabilitation and Nursing Center, Inc. consistent with this decision; and it is further

ORDERED that the remaining parties are directed to appear for a virtual or in-person conference before the court on August 10, 2020 at 11:30 AM.

This constitutes the decision and order of the court.

Date: July 1, 2020

HON. GEORGE J. SILVER