

Biden v Staffenberg

2020 NY Slip Op 32666(U)

August 12, 2020

Supreme Court, New York County

Docket Number: 805311/15

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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CAROLINE BIDEN, INDEX NO. 805311/15

Plaintiff,

-against-

DAVID A. STAFFENBERG, M.D., MICHAEL W. CHU, M.D.,
NYU FGP PLASTIC SURGERY ASSOCIATES and
NYU LANGONE MEDICAL CENTER,

Defendants.

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JOAN A. MADDEN, J.:

In this action for damages for medical malpractice and lack of informed consent, defendants David A. Staffenberg, M.D., Michael W. Chu, M.D. and NYU Hospitals Center s/h/a NYU Langone Medical Center (“NYU Hospital”) move for summary judgment.¹ Plaintiff opposes the motion in part.²

On May 10, 2013, Dr. Staffenberg performed surgery to excise a vascular malformation from plaintiff’s lower right eyelid/upper right cheek, and on December 19, 2013 he performed a revision surgery. Based on the affirmation of plaintiff’s expert, a plastic, and oral and maxillofacial surgeon, plaintiff bases her claims on the May 2013 surgery alone and alleges that Dr. Staffenberg’s departed from the standard of care by: 1) failing to recognize the inherent high

¹By stipulation dated February 2, 2016, the action was discontinued as against defendant NYU FGP Plastic Surgery Associates.

²The Affirmation in Opposition to Defendant’s Motion states that plaintiff “has no opposition to granting summary judgment to Defendant Chu, who was a resident at the time.” The Affirmation is silent as to defendant NYU Hospital, but at oral argument, plaintiff’s counsel advised that the claim against such defendant is based solely on vicarious liability.

risk of complications in excising plaintiff's vascular malformation located in the muscle of her right lower eyelid; 2) failing to formulate an appropriate surgical plan; and 3) using cartilage from her ear as a graft to maintain vertical position of the lower eyelid. The expert also opines that Dr. Staffenberg failed to provide the appropriate and necessary information for plaintiff to make an informed decision about the surgery, and as a result of the departures and the lack of informed consent, plaintiff suffered disfigurement, eyelid paralysis and pain, scarring and diminished vision, and required two additional surgeries that augmented her injuries.³

The following facts are not disputed unless otherwise noted. Plaintiff was born with a vascular malformation under her right eye.⁴ From 1997 to 2010, she was treated for the condition at various times with laser treatments, steroid injections, scleropathy, and an unsuccessful attempt at surgical excision.⁵ On April 19, 2013, when plaintiff was 25 years old, she first presented to Dr. Staffenberg and reported that despite prior treatments, the condition had gradually worsened, and she was having pain, swelling and discomfort. On examination, Dr. Staffenberg noted a bluish subcutaneous lesion, slightly tender, over the right malar area extending to the right lower eyelid. He ordered an MRI which revealed that the malformation occupied the upper part of the right cheek and nearly the whole right lower eyelid. On April 25,

³To the extent the complaint and bills of particulars allege other departures that are not addressed by plaintiff's expert, those departures are deemed withdrawn and the Court will not address them. Plaintiff has also withdrawn her claim for lost income.

⁴Dr. Staffenberg testified that a vascular malformation is an abnormal collection of blood vessels in a particular anatomical area, which can be congenital or the result of trauma.

⁵The medical records show that in 2001, Dr. David Low attempted to perform a surgical excision, but after making an incision, he found the vessels were fragile and difficult to identify. As a result, he did not continue with the procedure and instead performed an intravenous scleropathy with a diluted alcohol-type solution.

2013, plaintiff returned to Dr. Staffenberg and they discussed the results of the MRI and surgical removal of the venous malformation. On May 10, 2013, Dr. Staffenberg performed an excision of the vascular malformation of the right cheek and lower eyelid, and reconstruction with a cartilage graft from plaintiff's right ear. Plaintiff saw Dr. Staffenberg post-operatively through June 2013 and did not see him again until December 17, 2013, when he noted a residual venous malformation of the right lower eye lid with prominence of the cartilage graft. On December 26, 2013, Dr. Staffenberg performed another resection of the lesion and revision of the reconstruction. On May 26, 2016 non-party Dr. Cynthia Boxrud performed revision surgery which included the removal of the ear cartilage graft and replacing it with a material known as AlloDerm.

On August 10, 2015, plaintiff commenced the instant action asserting claims for medical malpractice and lack of informed consent. Defendants Dr. Staffenberg, Dr. Chu and NYU Hospital are now moving for summary judgment. As noted above, plaintiff does not oppose the portion of the motion against Dr. Chu, the claims against NYU Hospital are based solely on vicariously liability, and the claims against Dr. Staffenberg are based solely on the first surgery performed on May 10, 2013.

A defendant moving for summary judgment in a medical malpractice action must make a prima facie showing of entitlement to judgment as a matter of law by showing that "in treating the plaintiff, there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged." Roques v. Nobel, 73 AD3d 204, 206 (1st Dept 2010). To satisfy this burden, defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the

bill of particulars, and is detailed, specific and factual in nature. Id.; see Joyner-Pack v. Sykes, 54 AD3d 727, 729 (2nd Dept 2008). Expert opinion must be based on facts in the record or those personally known to the expert, and the opinion of defendant's expert should specify "in what way" the patient's treatment was proper and "elucidate the standard of care." Ocasio-Gary v. Lawrence Hospital, 69 AD3d 403, 404 (1st Dept 2010). Defendant's expert opinion must "explain 'what defendant did and why.'" Id. (quoting Wasserman v. Carella, 307 AD2d 225, 226 [1st Dept 2003]).

"[T]o avert summary judgment, plaintiff must demonstrate that the defendant did in fact commit malpractice and that the malpractice was the proximate cause of the plaintiff's injuries." Roques v. Nobel, supra at 207. To meet this burden, "plaintiff must submit an affidavit from a medical doctor attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged." Id. If the parties' conflicting expert opinions are adequately supported by the record, summary judgment must be denied. See Frye v. Montefiore Medical Center, 70 AD3d 15 (1st Dept 2009); Cruz v. St Barnabas Hospital, 50 AD3d 382 (1st Dept 2008).

In support of the motion, defendants submit the expert affirmation of Dr. Corrine E. Horn, who is board certified in both head and neck surgery, and facial plastic and reconstructive surgery. Dr. Horn reviewed the bills of particulars, party and non-party depositions, and the medical records from Dr. Staffenberg and NYU Hospital, as well as physicians who treated plaintiff prior to and after Dr. Staffenberg, including Dr. Cynthia Boxrud, Dr. Jurij Bilyk, Dr. Roberta Gausas, Dr. Henry Spinelli, and Dr. David Lowe. Dr. Horn opines that Dr. Staffenberg's pre-operative evaluation and recommendations, surgical care and treatment of plaintiff were at all

times appropriate and within the standard of care.

Pointing to plaintiff's first visit to Dr. Staffenberg on April 19, 2013, when he examined plaintiff and noted a bluish subcutaneous lesion over the right malar area extending to the right lower eyelid, Dr. Horn opines that he appropriately referred plaintiff for an MRI before making a definitive treatment recommendation, since she previously had non-surgical interventions that were unsuccessful, and it was likely surgery would be indicated. At plaintiff's next visit on April 25, 2013, Dr. Staffenberg reviewed the results of the MRI, which showed that the lesion was vascular in nature, 2 cm in diameter and occupying upper part of the right cheek and virtually the whole right lower eyelid. Dr. Horn opines that Dr. Staffenberg appropriately advised plaintiff that given the location of the lesion, after it was removed, he would need to reconstruct the lower eyelid to ensure proper positioning and minimize potential distortion; and since the lesion was near the sensory nerve, its removal bore the risk of numbness to nearby regions, including the cheek, lower eyelid, nose, upper lip and upper teeth.

Addressing the ear cartilage graft, Dr. Horn opines that Dr. Staffenberg advised plaintiff that since the lesion was completely within the orbicularis oculi muscle⁶ of the lower eyelid, the muscle would be removed with the lesion, and without the muscle the eyelid would lose support and be pulled downward, so reconstruction during the same procedure was necessary to preserve the appearance of the lower eyelid and the contour of the lower eyelid margin against the eye.

⁶According to plaintiff's expert, the lower eyelid is composed of a very thin skin, and the orbital ocularus muscle is located just deep to the skin and contributes to the shape of the lower eyelid. The eyelid is composed of three lamella: 1) anterior, skin or orbicularis muscle; 2) middle - orbital septum and eyelid retractors; and 3) posterior - tarsus and conjunctiva. The expert states that plaintiff's vascular malformation occupied both the anterior and middle lamella.

Dr. Horn opines that surgeons may use their professional judgment in choosing a particular type of graft; it was “certainly reasonable” for Dr. Staffenberg to elect to reconstruct the lower eyelid using a cartilage graft from plaintiff’s ear; and even though other types of grafts may be used, the use of the plaintiff’s own cartilage reduced the risk of infection and rejection.

As to Dr. Staffenberg’s surgical plan, Dr. Horn points out that he intended to use a canthopexy⁷ to reinforce the outer corner of the eye to add support and prevent an abnormal lower eyelid position, and to insert a temporary Frost stitch to help support the lower eyelid during the postoperative swelling period. She opines that these procedures were appropriate to minimize the risk of malposition following excision of the malformation.

Based on Dr. Staffenberg’s intra-operative notes from the May 10, 2013 surgery, Dr. Horn opines that he properly performed the excision and reconstruction using an ear cartilage graft, as the malformation was excised, immediate reconstruction was obtained using the conchal (ear) cartilage, the graft was appropriately positioned in the lower eyelid, and a Frost suture and canthopexy were properly inserted to reduce the risk of malpositioning. She points to Dr. Staffenberg’s notes that the lesion was completely within the substance of the orbicularis oculi muscle; the muscle was removed with the lesion and immediately reconstructed with cartilage from the right ear; the cartilage was excised from the ear and measured approximately 23mm in length and 10mm in height; the cartilage graft was carefully contoured for complete replacement of the middle lamella from the medial aspect to the lateral aspect; the inferior portion was carefully sutured to the periosteum at the inferior orbital rim; the graft was secured to the inferior

⁷Dr. Staffenberg testified that an canthopexy is a stitch used to reinforce or tighten the outer corner of the eye.

aspect of the tarsal plate and excellent lid posture was obtained; a dominant crease of the right lateral canthus was opened for 6 mm to allow for the inferior limb of the lateral canthal tendon to be sutured; the suture was then brought up to inner aspect superior to the Whitnall's tubercle, where the periosteum was included and tied to achieve a canthopexy; and the surgical sites were irrigated and sutured closed.

As to the post-operative period, Dr. Horn opines that Dr. Staffenberg's follow-up care was at all times appropriate and within the standard of care, as the medical records demonstrate that plaintiff had no signs of infection, her eyelid position was described as excellent, and Dr. Staffenberg appropriately instructed plaintiff to apply sun screen and massage the surgical scar. Dr. Horn points to Dr. Staffenberg's medical records which show that he saw plaintiff for four post-operative visits on May 15, 21 and 28, and June 17, 2013, and documented that plaintiff's lower eyelid was healing well without signs of infection, the eyelid position was "excellent" and there was no ectropion. She opines that these statements in Dr. Staffenberg's records, show that the graft was properly positioned, and the surgery and reconstruction were successful, and as Dr. Staffenberg had explained prior to surgery, it takes approximately one year for the body to fully heal and revision surgery would likely be needed.

Dr. Horn points out that as of June 2013, there is no documentation or evidence of any residual malformation, discoloration, ectropion, malpositioning, residual malformation or discoloration. She notes that after June 2013, plaintiff did not see Dr. Staffenberg again until December 17, 2013, when "it appears as if her surgical healing stalled," as plaintiff presented with a visible venous malformation and a palpable cartilage graft, but "importantly" the graft was still properly positioned, since it was supporting the lower eyelid. Dr. Horn opines that residual

malformation and palpable graft were known risks of the May 10, 2013 surgery which were discussed prior to surgery, and that Dr. Staffenberg also appropriately explained on several occasions that revision surgery would likely be necessary, particularly since her venous malformation was congenital and that the graft would be adjusted during revision surgery.

With respect to the informed consent issue, Dr. Horn opines that Dr. Staffenberg appropriately advised plaintiff of the risks and benefits of the surgery, acknowledged the alternatives including no treatment, and provided plaintiff with sufficient information before she consented to the procedure. To support her opinion, Dr. Horn notes that Dr. Staffenberg advised plaintiff that the typical post-operative course included discomfort, black and blue ecchymosis of the eyelid and cheek area, blood shot eyes and swelling of the ear where the cartilage graft was removed; the entire period of healing would last at least one year; and follow-up was important to guide healing. Dr. Staffenberg also recommended that plaintiff take pain medication and use cold compresses to reduce the pain and discomfort, and advised that revision surgery was very common to achieve the best possible result, including repositioning the eyelid, adjusting grafts and adding soft tissue.

Specifically as to the May 10, 2013 surgery, Dr. Horn opines that based on Dr. Staffenberg's records and testimony, he obtained plaintiff's appropriate consent after advising her of the risks, benefits and alternatives, as well as the surgical plan and expected recovery period. To support her opinion, Dr. Horn points to the results of the MRI and Dr. Staffenberg's Operative Report which not only refers to plaintiff's prior unsuccessful treatment for the vascular malformation and her recent complaints that the mass had become larger and painful, but also states that they reviewed the risks, options and benefits of further treatment, including the

possibility of another attempt at sclerosis, but given the unsuccessful outcome of the prior attempts with sclerosis, plaintiff wished to proceed with surgery; they discussed the scars and challenge of the lower eyelid position, and the possible need for the addition of soft tissue fillers at a later date; plaintiff understood additional surgery would likely be required to obtain the best possible result; and all questions were answered to the patient's satisfaction and an informed consent was signed and witnessed.

Finally, Dr. Horn opines that plaintiff's claimed injuries were not caused by the actions or inactions of Dr. Staffenberg, as residual venous malformation, repositioning of the graft, lower eyelid malpositioning and revision surgery are all known risks of the venous malformation excision and reconstruction surgery performed by Dr. Staffenberg on May 10, 2013; plaintiff was advised of such risks before consenting to the surgery; and the fact that she underwent revision surgery and was found to have residual malformation with a palpable graft is not evidence of any departure by Dr. Staffenberg.

Based on the foregoing, Dr. Staffenberg has made a prima facie showing for entitlement to judgment as a matter of law and the burden shifts to plaintiff. In opposition, plaintiff submits the name-redacted affidavit of a board certified plastic and oral and maxillofacial surgeon, who reviewed Dr. Staffenberg's medical records, the medical records of Dr. Boxrud, Dr. Krein, Dr. Bilyk and Dr. Spinelli, the report of Dr. Grant, NYU imaging studies, party and non-party depositions, photographs and the affirmation of defendant's expert Dr. Horn.⁸

At the outset, the Court addresses defendant's procedural objections to plaintiff's

⁸Plaintiff submits Dr. Spinelli's handwritten records, but his notes are illegible. The records of Dr. Krein and Dr. Bilyk, and the report of Dr. Grant are not part of the record before the Court.

opposition. Defendants object that plaintiff's expert is not qualified to render an expert opinion. Plaintiff provided for the Court's in camera review, an unredacted copies of the expert's affirmation and curriculum vitae which demonstrate that the expert is sufficiently qualified to provide an expert opinion in this action. Although plaintiff has not submitted a certificate of conformity for the expert's out-of state affidavit, the absence of a certificate of conformity for a foreign affidavit is a mere irregularity and not a fatal defect. See Wager v. Rao, 178 AD3d 434 (1st Dept 2019). Moreover, even if, as defendants assert, plaintiff's opposition was untimely filed approximately a week after the deadline, defendants fail to show that they were actually prejudiced by the delay, as they submitted their reply papers and did not contact the Court to request an extension of time to reply.

Plaintiff's expert opines that Dr. Staffenberg departed from the standard of care by failing to recognize the inherent high risk of complications associated with the excision of plaintiff's malformation, and demonstrating poor surgical planning. Specifically, the expert opines that the extent of the vascular malformation mitigated against surgery, as it was large, two centimeters in diameter, and occupying the orbicularis oculi muscle and the middle lamella of the right lower eyelid, and excision required removal of nearly the entire eyelid musculature, which led to injury and scarring more painful and disfiguring than the existing condition and appearance; the removal of nearly the entire muscle would nearly paralyze the entire eyelid; and since the patient was a young woman and given the high likelihood of disfigurement, surgery should not have been attempted, as the "particular result was a near certainty" and the appropriate course of action would have been to recommend a course of injections to treat the malformation or no treatment at all.

Plaintiff's expert opines that Dr. Staffenberg's use of ear cartilage to maintain vertical eye lid position departed from the standard of care, since it is the surgeon's duty in performing lower eyelid reconstruction to minimize distortion and malposition, and the use of firm ear cartilage is "less than an ideal choice" to replace the eyelid musculature underneath the overlying thin eyelid skin which is the thinnest skin in the body. The expert opines that combining the tissues in this way leads to palpable and visible graft material in any patient, and that graft materials such as Alloderm, were better alternatives and would have at least mitigated some of the anticipated disfigurement, but the "best approach" would have been no surgery at all.

Plaintiff's expert addresses the opinions of defendant's expert, Dr. Horn. The expert objects that Dr. Horn's opinion that plaintiff was healing well up through her visit with Dr. Staffenberg in June 2013, is refuted by the available evidence, including photographs taken after the May 2013 surgery, which show that the prominence of the cartilage graft and residual malformation were present immediately after surgery. Plaintiff's expert points to Dr. Horn's opinions that venous malformations reappear, particularly if they are congenital, and that extreme caution must be used in attempting to eradicate them, due to the risks including distortion of the surrounding anatomy, numbness, corneal injury, eyelash injury and pain. Plaintiff's expert asserts that Dr. Horn's opinions support "my opinion, that the risks of surgery mitigate against its performance unless necessary."

Plaintiff's expert notes that while Dr. Horn describes the graft as palpable but not visible and the surgical outcome as "excellent," Dr. Horn also states that plaintiff wanted revision surgery to reduce the "prominence" of the graft, which according to plaintiff's expert means "visible appearance." Plaintiff's expert asserts that if the graft were properly placed and the eyelid

properly positioned, as Dr. Horn and Dr. Staffenberg claim, revision surgery would not have been necessary. The expert also objects that Dr. Horn's statement that when plaintiff's returned to Dr. Staffenberg in December 2013, she reported she was "very happy with the result," begs the question as to why in 2016, Dr. Boxrud removed the cartilage graft and replaced it with Alloderm, as if ear cartilage were "ideal," it could have just been repositioned.

Plaintiff's expert opines that Dr. Staffenberg failed to obtain the appropriate informed consent from plaintiff, as the nature of this surgery required an extensive conversation with the patient, including family members, advising that vascular malformations are difficult to eradicate; even with surgery since there is a likelihood of recurrence; and the procedure involved the "high risk of bad outcome" and the likelihood of disfigurement, including the possibility of malposition, the use of the cartilage graft, nerve damage, scar tissue formation, dehiscence, infections, ectropion (drooping of the lower lid), recurrence, irregular eyelid margins leading to foreign body sensation, dry eyes and the need for additional surgery. The expert points out that with the exception of Dr. Staffenberg's testimony, there is no evidence plaintiff received the appropriate and necessary counseling as to the anticipated outcome of the procedure, and emphasizes that "this is not a random poor surgical outcome, but rather the expected outcome of lower eyelid excision of a vascular malformation." The expert notes that plaintiff explicitly testified that not until after the surgery did she have any knowledge that Dr. Staffenberg intended to use a graft on her lower eyelid, and that he would be removing a portion of her ear as the graft material.

Addressing Dr. Horn's opinion that Dr. Staffenberg obtained plaintiff's proper consent, plaintiff's expert asserts that Dr. Horn ignores the testimony of plaintiff and her family that plaintiff was not given the requisite information about the risks, benefits and alternatives to the

procedure. Plaintiff's expert also asserts that while Dr. Horn states that Dr. Staffenberg explained to plaintiff that the vascular malformation occupied the eyelid and support for the eyelid would be lost, there is no mention he explained her lower eyelid would be paralyzed; and while Dr. Horn states that Dr. Staffenberg advised plaintiff that it was possible for a venous malformation to recur, the use of the term "possible" was misleading, since reoccurrence was "really quite likely."

Plaintiff's expert opines that the above departures and lack of informed consent resulted in plaintiff's subsequent complaints of disfigurement, eyelid paralysis, diminished vision and pain; had Dr. Staffenberg opted for other treatment or no treatment, the surgery and its resultant injuries would have been avoided; and had Dr. Staffenberg informed plaintiff that the result of surgical excision would result in increased disfigurement and pain, plaintiff would not have had the surgery, as she has testified. The expert opines that the improper use of ear cartilage to support plaintiff's lower eye compounded the poor result and required two additional surgeries that augmented plaintiff injuries, as documented by the photographs and described in Dr. Grant's report. The expert points out that while Dr. Staffenberg's noted after the May 2013 surgery, that plaintiff had perfect eyelid position, the photographs taken by plaintiff after surgery show an evident malposition of the graft and it is clearly visible as described by plaintiff and her family.

The Court finds that the opinions of plaintiff's expert are sufficient to raise material issues of fact as to the alleged departures and the lack of informed consent. The parties' experts offer sharply diverging opinions as to whether Dr. Staffenberg departed from the standard of care by performing the surgery at the outset given the nature of procedure and the high likelihood of disfigurement, as plaintiff's expert avers. The experts likewise sharply disagree as to whether Dr. Staffenberg departed from the standard of care by using a cartilage from plaintiff's ear as a graft

for her lower right eyelid, rather than graft material such as Alloderm, which was the material Dr. Boxrud used when she removed and replaced the ear cartilage graft in 2016.

As to lack of informed consent claim, a defendant moving for summary judgment on a lack of informed consent claim must make a prima facie showing that plaintiff was informed of any foreseeable risks, benefits and alternatives of the treatment rendered. See Orphan v. Pilnik, 66 AD3d 543 (1st Dept 2009), aff'd 15 NY3d 907 (2010); Chan v. Yeung, 66 AD3d 642 (2nd Dept 2009). The mere fact that plaintiff signed a consent form does not establish defendant's prima facie entitlement to judgment as a matter of law. See Godel v. Goldstein, 155 AD3d 939 (2nd Dept 2017); Santiago v. Filstein, 35 AD3d 184 (1st Dept 2006). Here, the conflicting expert opinions and the parties' conflicting testimony raise issues of fact and credibility as to whether Dr. Staffenberg properly and adequately informed plaintiff of the risks, benefits and alternatives of the May 2013 surgery. See Ayers v. Mohan, 182 AD3d 479 (1st Dept 2020); Robinson v. Nelson, 172 AD3d 642 (1st Dept 2019); Bradley v. Soundview Healthcenter, 4 AD3d 194 (1st Dept 2004). Notably, Dr. Staffenberg testified that he discussed with plaintiff each step of the surgery, including the need to reconstruct her eyelid with a graft from her ear, as well as the risks, benefits and options of the procedure, including the risks of recurrence, eyelid malposition, contour deformity, numbness and nerve damage. Plaintiff, on the other hand, testified that Dr. Staffenberg simply told her that he would remove the vascular malformation and she would be able to "put a little cover-up on it in two days. . . No big deal." She testified that he did not discuss any potential downside to the surgery, he did not tell her she would need a graft or that the graft would be taken from her ear, and if he had told her about the graft, she would have never had the surgery.

Thus, in view of the experts' conflicting opinions and the parties' conflicting testimony,

issues of fact and credibility exist as to both the malpractice and lack of informed consent claims, which preclude summary judgment as to Dr. Staffenberg. See Ayers v. Mohan, supra; Robinson v. Nelson, supra; Frye v. Montefiore Medical Center, supra; Cruz v. St Barnabas Hospital, supra; Bradley v. Soundview Healthcenter, supra.

Summary judgment is denied as to defendant NYU Hospital to the extent plaintiff's claims against such defendant are based on a theory of vicarious liability. In the absence of opposition, defendant Michael C. Chu, M.D. is entitled to summary judgment.

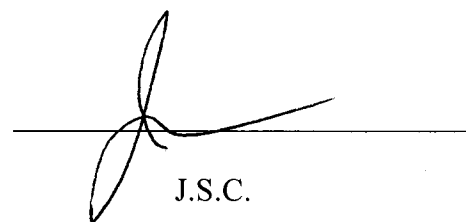
Accordingly, it is

ORDERED that the branch of the motion for summary judgment by defendants David A. Staffenberg, M.D. and NYU Hospitals Center s/h/a Langone Medical Center is denied; and it is further

ORDERED that the branch of the motion for summary judgment by defendant Michael W. Chu is granted in the absence of opposition and the Clerk is directed to enter judgment dismissing the action as against such defendant.

DATED: August 12, 2020

ENTER:



J.S.C.

HON. JOAN A. MADDEN
J.S.C.