

**DeJesus v Our Lady of Consolation Geriatric Care
Ctr.**

2020 NY Slip Op 32882(U)

September 3, 2020

Supreme Court, Suffolk County

Docket Number: 43725/2010

Judge: David T. Reilly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip
Op 30001(U), are republished from various New York
State and local government sources, including the New
York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official
publication.

SHORT FORM ORDER

COPY

INDEX No. 43725/2010
CAL. No. 201901152OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 30 - SUFFOLK COUNTY

PRESENT:

Hon. DAVID T. REILLY
Justice of the Supreme Court

MOTION DATE 11/6/19
ADJ. DATE 6/10/20
Mot. Seq. # 004 MD

-----X
CARMEN C. DEJESUS, as
ADMINISTRATRIX of the ESTATE of ROSA
ANDUJAR, Deceased,

Plaintiff,

- against -

OUR LADY OF CONSOLATION
GERIATRIC CARE CENTER and GOOD
SAMARITAN HOSPITAL MEDICAL
CENTER,

Defendants.
-----X

PARKER WAICHMAN, LLP
Attorney for Plaintiff
6 Harbor Park Drive
Port Washington, New York 11050

BARTLETT LLP
Attorney for Defendant Good Samaritan
Hospital Medical Center
320 Carleton Avenue, Suite 7500
Central Islip, New York 11722

BOWER LAW P.C.
Attorney for Defendants Our Lady of Consolation
Geriatric Care Center
1220 RXR Plaza
Uniondale, New York 11556

Upon the following papers numbered 1 to 45 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-22; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 23-43; Replying Affidavits and supporting papers 44-45; Other ; it is

ORDERED that the motion by defendant Good Samaritan Hospital Medical Center seeking summary judgment dismissing plaintiff's complaint is denied.

Plaintiff Carmen DeJesus, as Administrator of the Estate of Rosa Andujar, commenced this action against defendants Our Lady of Consolation Geriatric Care Center and Good Samaritan Hospital Medical Center to recover damages for injuries allegedly sustained by the decedent Rosa Andujar as

DeJesus v Our Lady of Consolation

Index No. 43725/2010

Page 2

result of medical malpractice, negligent hiring and supervision, and wrongful death.¹ The gravamen of the complaint against Good Samaritan Hospital Medical Center (Good Samaritan Hospital) is that during Rosa Andujar's admission from December 7, 2008 through December 8, 2008, the staff and doctors failed to continuously monitor and supervise her, failed to implement proper measures to prevent her from falling despite knowing of her prior history of falls, failed to assign employees' duties consistent with their job description, education, knowledge and skills training, failed to timely inform her legal representative that she had been in an accident while at the hospital, failed to properly transfer her, and failed to timely implement physicians' orders.

The following facts are not in dispute. Rosa Andujar, an 86-year old women with a history of dementia, vision impairment, hearing impairment, osteoporosis, chronic severe pulmonary disease, tuberculosis, gait impairment, a history of falls, fibrothrax, incontinence, cachectic appearance, and weighing approximately 77 pounds, was a resident of Our Lady of Consolation Geriatric Care Center. During her residency at Our Lady of Consolation, she was transferred to and admitted into Good Samaritan Hospital for acute medical care on August 23, 2008 through August 28, 2008, and on September 3, 2008 through September 9, 2008. On December 7, 2008, at approximately 2:21 a.m., Rosa Andujar presented to Good Samaritan Hospital following a fall from her bed at Our Lady of Consolation for treatment of a suspected left clavicle fracture. Rosa Andujar had a Do Not Resuscitate order that had been executed by herself and her health care proxy, plaintiff Carmen DeJesus, her niece. Prior to Rosa Andujar's arrival at Good Samaritan Hospital, plaintiff was notified by Our Lady of Consolation that her aunt was being transferred to the hospital after having fallen from her bed.

Upon arrival at the Emergency Department, following triage, Rosa Andujar was placed in a bed, specifically Bed #6, approximately six feet from the nurse's station, her vital signs were normal, she was alert, oriented, frail and thin in appearance, and pulse oxygen was 78% on room air, but 100% on four liters nasal cannula. A chest x-ray, a left shoulder x-ray, an electrocardiogram, a computerized tomography (CT) scan of the brain, and blood work were ordered by Dr. Evgeniy Moshkovich, and she was placed on cardiac monitoring. She was physically examined by Dr. Jason Idelson, who noted that she was cooperative neurologically, sleepy, but followed commands and frail with a non-tender abdomen. The chest x-ray revealed unchanged fibrothrax, and the left shoulder x-ray revealed an acromial fracture. While waiting for the results of the CT scan of her brain, Rosa Andujar fell from her bed in the Emergency Department and sustained multiple injuries.

Following the fall from the bed in the Emergency Department, Rosa Andujar was given another CT scan of the brain, which revealed a small parenchymal bleed without edema or mass effect. She also underwent a CT scan of the orbits, which showed a fracture of the lateral wall of the left orbit, and a maxillofacial CT scan, which revealed fractures of the central and interior left zygomatic arch, a fracture

¹ Plaintiff also alleged violations of the Emergency Medical Treatment and Active Labor Act and Public Health Law § 2801-d and 2803-c, lack of informed consent, and medical malpractice regarding Rosa Andujar's admission to Good Samaritan Hospital from August 23, 2008 through August 28, 2008, and September 3, 2008 through September 9, 2008. However, plaintiff conceded that these causes of action are inapplicable and sought dismissal of the causes of action. As such, the Court grants dismissal of said causes of action.

of the left nasal bone, and fractures of the anterolateral and posterolateral wall of the left maxillary sinus. A CT scan of the cervical spine demonstrated no evidence of fracture or paravertebral soft tissue swelling, and CT scans of the chest, abdomen and pelvis revealed no significant change compared to her prior CT scans in September 2008. Thereafter, at approximately 5:20 a.m., Dr. Moshkovich ordered Rosa Andujar placed in a Posey vest, a soft restraint, ordered consultations with trauma surgeon, neurosurgeon, ophthalmologist, and plastic surgeon, and ordered one-on-one observation of her. Dr. Moshkovich also requested a consultation for admission into the hospital, an orthopedic consultation, ordered bilateral wrist Posey restraints, and cleansed Rosa Andujar's face and performed the closure of the laceration over her left eye. At approximately, 5:56 a.m., Cristy Meyer, a registered nurse and the night shift assistant nursing manager of the Emergency Department noted that Rosa Andujar was found on the floor after sliding off of a stretcher, that she was awake and alert, and that Dr. Moshkovich was at her bedside. Rosa Andujar also was placed on antibiotics, and a D-Tap injection was given intramuscularly.

At approximately 7:55 a.m., Nurse Meyer noted that Rosa Andujar had increased agitation, tachycardia of 102, "unable to localize pain," and no ectopic heartbeats. Dr. Moshkovich, at approximately 8:42 a.m., again examined Rosa Andujar and noted normal chest excursions with respiration, dark blood to pharynx, left shoulder ecchymosis and mild soft tissue swelling, and head normocephalic with left periorbital superficial laceration/infraorbital ecchymosis. At approximately 9:08 a.m., Rosa Andujar was admitted into Good Samaritan Hospital with a trauma diagnosis, a special room and telemetry bed were requested, and it was noted that she was a risk for fall. When she was received on the surgical floor at approximately 9:48 a.m., she was awake, agitated, with cervical collar in place, cardiac monitoring in process and nasal packing. Once on the surgical floor, Rosa Andujar was seen by neurosurgery, trauma, and a hospitalist. Her pulse rate was 102, her respiration rate was 24, her blood pressure was 159/69, and her oxygen saturation was 94% on mask.

At approximately 10:30 a.m., plaintiff arrived at her aunt's bedside after having gone to Our Lady of Consolation and discovering her aunt was still at the hospital. She spoke with the doctor and nurse about the bruising on her aunt's face and left clavicle. Although she was not informed about the fall her aunt had in the Emergency Department, she was told Rosa Andujar was sedated to keep her comfortable, because she was in pain. Plaintiff inquired about the straps holding Rosa Andujar in place on the bed, and the nurse informed her that the straps would be removed if she promised to remain at her aunt's bedside, which she did. When plaintiff went to sign medical papers in the nursing administrator's office she was informed of her aunt's fall in the Emergency Department, but the administrator was unable to tell her which injuries occurred as a result of such fall and which ones happened at the nursing home. Instead, she was informed to speak to the supervisor in the Emergency Department.

At approximately 3:00 p.m., Rosa Andujar was transferred from the surgical floor to another unit within the hospital with one-on-one bedside supervision. She was received asleep, her oxygen saturation was 49%, and she was receiving oxygen via mask and nebulizer treatment with Albuterol. Following a conversation with the doctors about Rosa Andujar's condition, plaintiff stated that she did not want her aunt intubated, although her oxygen levels were decreasing. Plaintiff left the hospital to get her husband, but later returned and took pictures of her aunt's face and injuries, and, at approximately 10:30 p.m., she and her husband left the hospital for the night. At approximately 6:00 a.m., on December 8, 2008, a

Rapid Response Team code was called for Rosa Andujar, because her oxygen saturation was less than 90%. At approximately 6:45 a.m., a doctor called plaintiff to advise her that her aunt was in poor condition, and that she and other family members who wished to see Rosa Andujar should come to the hospital, because she would pass before midday. At approximately 7:30 a.m., Rosa Andujar was found in her room unresponsive with apnea and no pulses. A physician's assistant pronounced Rosa Andujar dead at approximately 7:55 a.m. At approximately, 8:00 a.m., plaintiff arrived at the hospital. Plaintiff requested that an autopsy be performed. The autopsy report, as well as the certificate of death, states that Rosa Andujar died from blunt force trauma and complication of fractures of left clavicle and facial skeleton, and lists atherosclerotic coronary artery disease, chronic pulmonary disease, osteoporosis, and chronic renal disease as secondary causes of death.

Good Samaritan Hospital now moves for summary judgment on the basis that its staff did not deviate from any standards of good and acceptable medical care when it rendered care to Rosa Andujar during her admission from December 7, 2008 to December 8, 2008, and that the care provided by its staff did not, in any way, proximately cause the injuries allegedly sustained by plaintiff. Good Samaritan Hospital also asserts that it did not negligently entrust the care of Rosa Andujar to individuals who were not skilled in the care and treatment of patients with Rosa Andujar's medical conditions. In support of the motion, Good Samaritan Hospital submits copies of the pleadings, the parties' deposition transcripts, certified copies of Rosa Andujar's medical records, certified copies of the death certificate and autopsy report of Rosa Andujar, and the affidavit of its expert, Dr. Timothy Haydock.

Plaintiff opposes Good Samaritan Hospital's motion on the grounds that there are material issues of fact as to whether Good Samaritan Hospital's staff deviated from good and accepted standards of medical practice in its treatment of Rosa Andujar, and whether its staffs' deviations were a proximate cause of the injury suffered by her. Plaintiff further contends that Good Samaritan Hospital was negligent in its hiring and supervision of its staff. In opposition to the motion, plaintiff submits, among other things, copies of the pleadings, uncertified copies of Rosa Andujar's medical records, certified copies of the death certificate and autopsy report of Rosa Andujar, and the affidavit of her expert, Dr. Barry Czeisler.

It is fundamental that the primary duty of a hospital's nursing staff is to follow the physician's orders, and that a hospital, generally, will be protected from tort liability if its staff follows the orders" (*Toth v Community Hosp. at Glen Cove*, 22 NY2d 255, 265, 292 NYS2d 440 [1968]; see *Sledziewski v Cioffi*, 137 AD2d 186, 538 NYS2d 913 [3d Dept 1988]). "A hospital may not be held vicariously liable for the malpractice of a private attending physician who is not an employee and may not be held concurrently liable unless its employees committed independent acts of negligence or the attending physician's orders were contraindicated by normal practice such that ordinary prudence required inquiry into the correctness of the same" (*Toth v Bloschinsky*, 39 AD3d 848, 850, 835 NYS2d 301 [2d Dept 2007]; see *Sela v Katz*, 78 AD3d 681, 911 NYS2d 112 [2d Dept 2010]; *Cerny v Williams*, 32 AD3d 881, 882 NYS2d 548 [2d Dept 2006]). However, "an exception to the general rule exists where a patient comes to the emergency room seeking treatment from the hospital and not from a particular physician of the patient's choosing" (*Schultz v Shreedhar*, 66 AD3d 666, 666, 886 NYS2d 484 [2d Dept 2009] quoting *Salvatore v Winthrop Univ. Med. Ctr.* 36 AD3d 887, 888, 829 NYS2d 183 [2d Dept 2007]; see *Sampson v Contillo*, 55 AD3d 588, 865 NYS2d 634 [2d Dept 2008]).

Moreover, “not every negligent act of a nurse [is] considered medical malpractice, but a negligent act or omission by a nurse that constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician constitutes malpractice” (*Bleiler v Bodnar*, 65 NY2d 65, 72, 489 NYS2d 885 [1985]; see *Spiegel v Goldfarb*, 66AD3d 873, 889 NYS2d 45[2d Dept 2009]). This conclusion is no different with respect to the emergency room nurse, functioning in that role as an integral part of the process of rendering treatment to a patient (*Bleiler v Bodnar*, *supra* at 72, 489 NYS2d 885). On a motion for summary judgment in a medical malpractice action, a medical professional has the initial burden of demonstrating that the medical treatment rendered to a plaintiff was within the acceptable standards of medical care, or that any departure or deviation was not a proximate cause of the alleged injury or damage sustained by the plaintiff (see *Maki v Bassett Healthcare*, 85 AD3d 1366, 924 NYS2d 688 [3d Dept 2011]; *Suits v Wyckoff Hgts. Med. Ctr.*, 84 AD3d 487, 922 NYS2d 388 [1st Dept 2011]; *Ramsay v Good Samaritan Hosp.*, 24 AD3d 645, 808 NYS2d 374 [2d Dept 2005]).

To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff’s bill of particulars (see *Bacalan v St. Vincent’s Catholic Med. Ctrs. of N.Y.*, 179 AD3d 989, 118 NYS3d 147 [2d Dept 2020]; *Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043, 912 NYS2d 77 [2d Dept 2010]). Where the defendant has met his or her burden, the plaintiff, in opposition, must demonstrate the existence of a triable issue of fact through the submission of evidentiary acts or materials, but only as to the elements on which the defendant met the prima facie burden (see *Schmitt v Medford Ctr.*, 121 AD3d 1088, 996 NYS2d 75 [2d Dept 2014]; *Gillespie v New York Hosp. Queens*, 96 AD3d 901, 947 NYS2d 148 [2d Dept 2012]; *Savage v Quinn*, 91 AD3d 748, 937 NYS2d 265 [2d Dept 2012]; *Stukas v Streiter*, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]). General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a medical provider’s summary judgment motion (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Garbowski v Hudson Val. Hosp. Ctr.*, 85 AD3d 724, 924 NYS2d [2d Dept 2011]). Further, an expert witness must possess the requisite skill, training, knowledge, or experience to ensure that an opinion rendered is reliable (see *e.g. Brady v Westchester County Healthcare Corp.*, 78 AD3d 1097, 912 NYS2d 104 [2d Dept 2010]; *Geffner v North Shore Univ. Hosp.*, 57 AD3d 839, 871 NYS2d 617 [2d Dept 2008]; *Mustello v Berg*, 44 AD3d 1018, 845 NYS2d 86 [2d Dept 2007]). Any alleged lack of experience by an expert is merely a factor that goes to the weight to be given to his or her opinion, and not to the admissibility of the expert’s opinion (see *Espinal v Jamaica Hosp. Med. Ctr.*, 71 AD3d 723, 734, 896 NYS2d 429 [2d Dept 2010]; see also *Mack-Cali Realty, LP v Everfoam Insulation Sys., Inc.*, 110 AD3d 680, 972 NYS2d 310 [2d Dept 2013]; *Texter v Middletown Dialysis Ctr.*, 22 AD3d 831, 803 NYS2d 687 [2d Dept 2005]).

Upon review of the affidavit of Good Samaritan Hospital’s expert, Dr. Timothy Haydock, the parties’ deposition testimony, and the additional exhibits submitted in support of the motion, the Court finds that Good Samaritan Hospital has established, as a matter of law, that its staff did not deviate from good and acceptable medical practice in rendering care to plaintiff’s decedent, Rosa Andujar, during her admission from December 7, 2008 through December 8, 2008, and that the treatment provided by its staff was not the proximate cause of the alleged injuries sustained by Rosa Andujar (see *Joyner v Middletown Med., P.C.*, 183 AD3d 593, 123 NYS3d 169 [2d Dept 2020]; *M.C. v Huntington Hosp.*,

DeJesus v Our Lady of Consolation

Index No. 43725/2010

Page 6

Berger v Hale, 81 AD3d 766, 916 NYS2d 831 [2d Dept 2011]; *Shahid v New York City Health & Hospitals Corp.*, 47 AD3d 800, 850 NYS2d 519 [2d Dept 2008]). Good Samaritan Hospital also demonstrated that its staff properly and timely followed the orders of the physicians treating Rosa Andujar, and that its staff did not commit any independent acts of negligence (see *Schultz v Shreedhar*, supra; *Martinez v La Porta*, 50 AD3d 976, 857 NYS2d 194 [2d Dept 2008]; *Cook v Reisner*, 295 AD2d 466, 744 NYS2d 426 [2d Dept 2002]).

In his affidavit, Dr. Haydock states that he is a physician licensed to practice in the State of New York and that he is board certified in emergency medicine. Dr. Haydock states that in his opinion, within a reasonable degree of medical certainty, the care and treatment rendered to Rosa Andujar during her admittance to Good Samaritan Hospital was at all times within the confines of good and acceptable medical practice. Dr. Haydock states that the staff assigned to care for and treat Rosa Andujar were not deficient in their training and skills, and that the assigned employees' duties were consistent with their job description and their level of competence, education, preparation and experience. Dr. Haydock states that the Emergency Department physicians and nursing staff were aware of Rosa Andujar's medical history, including her history of multiple falls, dementia diagnosis, problem with ambulation, her issues with voiding, since a bed pan was provided for her, history of tuberculosis, her frailness, and the fact that she was underweight. He states that based upon that history, the staff designated Rosa Andujar as high risk for falls, and that various medical protocols were instituted, such as placing her in a bed approximately six feet from the nurse's station, maintaining the bed in the lowest position, raising the side rails on the bed, and placing an alert in her medical chart to inform other staff members that she was at high risk for falls. He states that her medical condition was contemplated and considered by the treating medical team when the designation was made to denote her as high risk for falls and implementing the existing numerous protocols to minimize her potential for a fall. Dr. Haydock further states that there is no evidence in Rosa Andujar's medical records that the doctors and nursing staff at Good Samaritan Hospital did not take an accurate and complete history of Rosa Andujar concerning the nature, duration and onset of her complaints and conditions in order to prevent her from having any falls.

Dr. Haydock states that a call bell was provided to Rosa Andujar while she was a patient in the hospital, that there is no evidence that she attempted to utilize the call bell or that the doctors or staff failed to answer the call bell, and that there is no evidence to suggest that her environment in the hospital contained any accident hazards. Dr. Haydock states that bed alarms are used for patients who have been placed in a bed in a room away from direct visual observation, and that, since bed alarms have been shown to be ineffective in an Emergency Department setting, they are not utilized. He explains that bed alarms are not used in an Emergency Department setting, because they are distracting and disorientating to patients and often lead to agitation of the patient, since they sound with minor movements, such as a patient turning over in the bed, and leads to an increased risk for falls. He states that, in an Emergency Department setting, patients with high fall risks are placed immediately adjacent to the nursing station, which allows for direct visual observation, and obviates the need for bed alarms, as well as avoids the potentially adverse impact of a bed alarm. He states that floor mats are not utilized in an Emergency Department setting either, because they are a tripping hazard, impede medical services, do not allow stretchers or other medical equipment to easily roll across them, and can be discerning due to height differentials to patients, and create a tripping hazard for patients with dementia and/or gait imbalances. Moreover, Dr. Haydock states that floor mats only are used in long-term settings after an appropriate

assessment has been performed by physical therapy. He further states that a side booster was not necessary for Rosa Andujar because she was not seated in a chair while in the Emergency Department, that they are not required when a patient is in a bed, and that, since Rosa Andujar was placed on a stretcher in the Emergency Department, it was appropriate for the hospital's staff to use the side rails in an up position, to place the bed at the lowest position setting, and a call bell within reach to prevent her from falling off the bed. In addition, Dr. Haydock states that, since Rosa Andujar did not fall from the side of the bed, but crawled off the bottom of the bed and slid to the floor, it is his opinion, within a reasonable degree of medical certainty, that Good Samaritan Hospital utilized and implemented the proper intervention protocols to prevent Rosa Andujar from falling off the stretcher.

Furthermore, Dr. Haydock states that Rosa Andujar, upon arrival at Good Samaritan Hospital, at approximately 2:21 a.m., was properly triaged, assessed by a primary nurse, by Dr. Jason Idelson, an Emergency Department physician, and by Dr. Evgeniy Moshkovich, a board certified physician in emergency medicine. He states that Rosa Andujar did not sustain an injury as a result of any failure to assist her in transferring from a bed, chair or toilet. He states that prior to falling, it was noted by the physicians and nurses that, while she was sleepy, Rosa Andujar was cooperative, that she did not present with any evidence of agitation, that she did not attempt to get out of the bed on her own, and that she was voiding via the bedpan and resting comfortably. Dr. Haydock states that, although Rosa Andujar had dementia, a history of falls, a gait imbalance, was weak and frail, and used assistive devices to ambulate, neither physical restraints nor chemical restraints were warranted to prevent her from falling; and that physical restraints can negatively impact the dignity of patients. He explains that physical restraints routinely agitate patients, especially patients with dementia or other forms of altered mental states, which makes them more prone to potential injury, and that chemical restraints have potential adverse effects on patients, especially those with respiratory limitations, as well as can be disorienting to patients. Dr. Haydock further states that the standard of care is to avoid the use of physical and chemical restraints where a patient is compliant and does not appear to be a danger to herself or others, and that the staff acted appropriately by placing her in a bed adjacent to the nurse's station in the lowest setting position, performing hourly rounds to address Rosa Andujar's needs, and keeping her under constant monitoring and observation by members of the team. In addition, he states that, based upon her condition and her mood, Rosa Andujar did not require any stricter observations, such as one-on-one observation, prior to her fall in the Emergency Department.

Moreover, Dr. Haydock states, within a reasonable degree of medical certainty, it is his opinion that the doctors and staff at Good Samaritan Hospital appropriately instituted steps to minimize Rosa Andujar's high fall risk pursuant to the hospital's active protocols, and that the protocols were properly followed and enforced. He states that nurses and doctors performed frequent and detailed physical examinations and assessments of Rosa Andujar, that orders were timely and appropriately implemented to address her fall propensity, and that prior to her fall from the stretcher bed, Posey restraints, a one-on-one sitter, or any other more restrictive form of restraint was not warranted, and that her potential to fall was not underappreciated by the doctors and nurses tending to her. Dr. Haydock states the mere fact that Rosa Andujar had fallen out of the bed earlier that evening at Our Lady of Consolation did not constitute unsafe behavior requiring additional restraints when she arrived in the Emergency Department, since she did not display increased agitation and or demonstrate unsafe behavior in the Emergency Department. He states that the doctors and nurses conducted appropriate, detailed and thorough physical

examinations and assessments of Rosa Andujar at appropriate intervals, that her condition remained unchanged from presentation at the Emergency Department until she fell sometime between 4:43 a.m. and 5:18 a.m., since she had been taken for a left shoulder x-ray at approximately 4:36 a.m., and that after she fell she was appropriately monitored and sent for CT scans of her head, face, cervical spine, abdomen/pelvis and chest, that the results were timely obtained and relayed to her physicians, and that all necessary and appropriate care for her injuries were provided. He states that she was appropriately assessed by the nursing staff for any changes in her neurological condition, that the data was duly noted in her medical chart, and that the information was timely conveyed to her physicians. He states that the timing of plaintiff's notification of Rosa Andujar's injury did not impact the care and treatment she received, and that plaintiff, as Rosa Andujar's health proxy, had specifically directed, in accordance with Rosa Andujar's Do Not Resuscitate order, that she not be intubated. Dr. Haydock further states that, within a reasonable degree of medical certainty, the care and treatment rendered by Good Samaritan Hospital and its doctors, nurses, and staff to Rosa Andujar during her admission in December 2008 was within the accepted standard of medical care, and was not a proximate cause of the alleged injuries or damages sustained by plaintiff's decedent.

However, in opposition, plaintiff, by submitting the affidavit of her expert, Dr. Barry Czeisler, has raised triable issues of fact as to whether the staff of Good Samaritan Hospital departed from good and accepted medical practice and whether such departures were a proximate cause of Rosa Andujar's injuries (*see Young v Struhl*, 87 AD3d 1006, 932 NYS2d [2d Dept 2011]; *Howard v Kennedy*, 60 AD3d 905, 875 NYS2d [2d Dept 2009]; *Boutin v Bay Shore Family Health Ctr.*, 59 AD3d 368, 872 NYS2d 523 [2d Dept 2009]; *Borawski v Huang*, 34 AD3d 409, 824 NYS2d 362 [2d Dept 2006]). Dr. Czeisler, a board certified neurologist, states that it is his opinion, within a reasonable degree of medical certainty, that the care and treatment rendered to Rosa Andujar by the staff of Good Samaritan Hospital was not in accordance with good and accepted medical practice, and that the acts or omissions by Good Samaritan Hospital's staff were a proximate cause of plaintiff's decedent's injuries. Dr. Czeisler states that the failure of the doctors and nurses at Good Samaritan Hospital to implement safeguards to prevent Rosa Andujar from experiencing a fall resulted in her falling from her bed and sustaining a traumatic brain parenchymal bleed, a traumatic subarachnoid hemorrhage, a left eyebrow laceration, multiple facial fractures, and two fractures of the left zygomatic arch, as well as a severe nosebleed that required multiple treatments.

Dr. Czeisler states that these injuries were preventable and avoidable, that Good Samaritan Hospital failed to properly assess Rosa Andujar, and that there is no documentation in her chart from Good Samaritan Hospital to demonstrate that her stretcher, Bed #6, was maintained in the low-lock position with the side rails up to ensure that she would not fall. He states that the injuries sustained by Rosa Andujar were blunt force trauma injuries that were consistent with having fallen from a height with significant force impact onto her head and face, and that Good Samaritan Hospital should have implemented the most rigorous measures to prevent Rosa Andujar from falling, since she was brought to the hospital seeking treatment for a possible fractured clavicle from a fall she sustained at the nursing home where she was a resident. Dr. Czeisler further states that the failure to initiate the appropriate interventions to prevent falls strategies was a deviation from the standard of care, and that Good Samaritan Hospital failed to take appropriate steps to secure the patient and prevent a fall in light of the knowledge of the patient's prior falls and recent fall from the bed.

Additionally, Dr. Czeisler states that it is his opinion, within a reasonable degree of medical certainty, that the staff at Good Samaritan failed to appropriately monitor and supervise Rosa Andujar to assess her condition prior to the fall, since none of the staff at Good Samaritan Hospital provided first-hand details of the fall. He states that none of the staff at Good Samaritan Hospital witnessed Rosa Andujar's fall from the bed or were present when she fell, and that it was not until 5:56 a.m. that RN Meyer documented in Rosa Andujar's chart that she was found on the floor. He states that, since Rosa Andujar suffered from dementia, was frequently disoriented, and had a history of unsteady gait and falls, she required frequent monitoring and supervision. He explained that frequent monitoring and supervising of patients like Rosa Andujar suffering from dementia is particularly crucial, because they are at a high risk for accidental injury, and that such patients can experience changes in mentation after injuries or illness, especially those requiring hospitalization due to post-traumatic clavicle injury for which she presented for evaluation.

Dr. Czeisler further explains that given Rosa Andujar's condition, she required more frequent safety checks, such as every 15 minutes, to adequately address the level of care she required. He states that Good Samaritan also failed to use bed alarms. Dr. Czeisler explains that bed alarms activate whenever a patient moves, alerting the staff that the patient is moving so that they can take measures to prevent the patient from falling. Furthermore, he states that Good Samaritan Hospital was well aware of the fact that Rosa Andujar was a resident of a nursing home and unable to care for herself, suffered from dementia, was often confused, and a high risk for falls; nevertheless, she was left on her bed unattended, and neither one-on-one observation nor Posey restraints were not used to prevent her from falling while she was in the Emergency Department. Dr. Czeisler states that the only verifiable safety measure the staff at Good Samaritan Hospital used was placing Rosa Andujar by the nurse's station, but that does not mean there is a direct line of sight for continuous observation of a patient, and the fact that none of the staff observed her fall shows that the implemented safety measure was inadequate. He states that the staff failed to respond to Rosa Andujar's increasing agitation and demonstration of unsafe behavior.

Moreover, Dr. Czeisler opines that the staff failed to properly monitor Rosa Andujar subsequent to her fall. He asserts the medical chart for Rosa Andujar reveals that nursing checks were performed every four hours once she was admitted into the hospital, and that the staff failed to measure her oxygen saturation for hours, which is critical to ensure that she was receiving sufficient oxygen, especially given her history of underlying severe pulmonary disease and escalating oxygen requirements in the Emergency Department following her fall. He states that by monitoring oxygen saturation level, the staff is alerted to decreases in oxygen saturation and can initiate appropriate measures to increase oxygen levels. Dr. Czeisler states that Good Samaritan Hospital failed to measure Rosa Andujar's oxygen saturation until the morning, when she suddenly deteriorated, and that this was the first documented oxygen saturation measurement following her admission into the hospital. He also states that Good Samaritan Hospital failed to provide staffing, in numbers and skill level, sufficient to provide nursing and related services to attain and maintain the highest degree of patient care as determined by each patient's assessment, which constitutes a deviation from the accepted standard of medical care, and that the staff failed to timely notify plaintiff of Rosa Andujar's injury. Dr. Czeisler states that in his opinion, within a reasonable degree of medical certainty, based upon his review of the records, Good Samaritan Hospital's negligence and deviations from the acceptable standards of care during its treatment of Rosa Andujar were the proximate cause of her injuries and death.

DeJesus v Our Lady of Consolation
Index No. 43725/2010
Page 10

Accordingly, the motion for summary judgment dismissing the complaint against Good Samaritan Hospital Medical Center is denied.

Dated: Sept 3, 2020
Riverhead, NY



J.S.C.
HON. DAVID T. REILLY

 FINAL DISPOSITION X NON-FINAL DISPOSITION