

<b>Brink v Hudson Val. Hosp. Ctr.</b>
2020 NY Slip Op 35004(U)
May 5, 2020
Supreme Court, Westchester County
Docket Number: Index No. 60436/2017
Judge: William J. Giacomo
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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

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CYNTHIA BRINK AS ADMINISTRATOR OF THE  
ESTATE OF CAROL A. BRINK,

Plaintiff,

Index No. 60436/2017

– against –

Seq. No. 1 & 2

HUDSON VALLEY HOSPITAL CENTER and TREETOPS  
REHABILITATION & CARE CENTER, LLC.,  
Defendants.

**DECISION & ORDER**

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In an action to recover damages for personal injuries, the defendant Treetops Rehabilitation & Care Center, LLC (motion seq. 1) and the defendant Hudson Valley Hospital Center (motion seq. 2) separately move for summary judgment, pursuant to CPLR 3212, dismissing the complaint:

**Papers Considered**

1. Notice of Motion/Affirmation of Stephen R. Macho, Esq./Exhibits A-O;
2. Affirmation of Jonathan Roman, Esq. in Opposition/Exhibits A-S;
3. Reply Affirmation of Stephen R. Macho, Esq.;
4. Notice of Motion/Affirmation of Francesca L. Mountain, Esq./Exhibits A-T;
5. Affirmation of Jonathan Roman, Esq. in Opposition/Exhibits A-P;
6. Reply Affirmation of Francesca L. Mountain, Esq.

**Factual and Procedural Background**

The 78-year-old decedent in this case, Carol A. Brink, was a resident of Treetops Rehabilitation & Care Center, LLC, between January 31, 2015, and January 22, 2016. Through her residency, the decedent experienced several falls.

Brink was admitted to Hudson Valley Hospital Center on January 19, 2015. On January 20, 2015, an unstageable ulcer of the right calcaneus (heel bone) was documented. On January 22, 2015, a stage II right buttock ulcer was documented. Brink was discharged to Treetops on January 31, 2015.

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On February 13, 2015, Brink fell at Treetops and was transferred to Hudson Valley and then back to Treetops. She fell again on February 28, 2015, and was transferred to Hudson Valley and discharged on March 8, 2015.

Plaintiff commenced this action for medical malpractice and violations of Public Health Law 2801-d and 2803-c against Hudson Valley and Treetops.

Treetops moves for summary judgment dismissing the complaint arguing that it was not negligent in its care and treatment of the decedent and that its staff adhered to the standards of reasonable care. Treetops also argue that it did not violate any resident rights under the Public Health Law and that punitive damages and attorneys' fees are not warranted.

Treetops submits an expert affirmation of Barbara Malach, M.D., board certified in geriatric medicine. Dr. Malach opines that Treetops complied with good and accepted standards of medicine in the care and treatment of the decedent and that the decedent did not suffer any injury proximately caused by its care. Treetops took all reasonable measures to avoid any deprivation of Brink's rights under the Public Health Law and Brink did not suffer any deprivation of such rights. Dr. Malach further opines that Brink exhibited multiple pre-existing medical conditions and co-morbidities placing her at risk for the development of decubitus ulcers whether avoidable or unavoidable.

In opposition, plaintiff argues that issues of fact exist regarding the pressure ulcers suffered by Brink during her residency at Treetops. Moreover, plaintiff argues that Treetops failed to properly reassess the decedent's fall care and implement necessary fall prevention following Brink's fall on February 10, 2015. Plaintiff also argues that Treetops' conduct was reckless in either ignoring a known risk or affirmatively placing Brink in harm.

Plaintiff submits an expert affirmation of a medical doctor board certified in internal medicine and geriatrics. The expert opines that Treetops departed from the standard of care in its treatment of Brink's that proximately caused her injuries.

Hudson Valley moves for summary judgment dismissing the complaint. Hudson Valley argues that at all times it adhered to the standard of care in treating Brink, that its treatment of Brink was not the proximate cause of her injuries, and that Brink's underlying medical condition made the development of pressure ulcers unavoidable. Hudson Valley further argues that the allegations do not support a claim for punitive damages.

Hudson Valley submits the expert affirmation of Elaine Healy, M.D., board certified in internal medicine, geriatric medicine, and hospice and palliative medicine. Dr. Healy opines that the Hudson Valley employees did not depart from the standard of care in the treatment of Brink. There is no evidence of any departures by Hudson Valley during Brink's admissions. Dr. Healy opines that the care and treatment rendered to Brink for treatment of pressure ulcers was at all times appropriate and timely. The staff

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implemented timely pressure ulcer prevention and treatment protocols and pressure reduction measures, which were appropriately followed. The treatment by the staff did not cause or contribute to Brink's wounds.

In opposition, plaintiff argues that issues of fact exist regarding Brink's admission to Hudson Valley. Plaintiff argues, inter alia, that Hudson Valley failed to perform pressure ulcer preventions, failed to conduct pressure ulcer risk assessment, failed to timely document pressure ulcers, and failed to implement a plan of care.

Plaintiff submits an expert affirmation of a medical doctor board certified in internal medicine and geriatrics. The expert opines that Hudson Valley departed from the standards of care that proximately caused injury to Brink.

### Discussion

"In order to establish liability for medical malpractice, a plaintiff must prove that the defendant deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff's injuries" (*Leavy v Merriam*, 133 AD3d 636, 637 [2d Dep't 2015]). A physician moving for summary judgment in a medical malpractice action must establish, prima facie, either that there was no departure from accepted community standards of medical practice, or that any alleged departure was not a proximate cause of the plaintiff's injuries (see *Aronov v Soukkary*, 104 AD3d 623, 624 [2d Dep't 2013]; *DiGeronimo v Fuchs*, 101 AD3d 933, 936 [2d Dep't 2012]). Once a defendant has made such a showing, the burden shifts to the plaintiff to "submit evidentiary facts or materials to rebut the prima facie showing by the defendant physician" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Defendants made a prima facie showing of entitlement to summary judgment by demonstrating through expert opinion that they did not deviate from the accepted standards of medical practice or that any alleged departure was not a proximate cause of the decedent's injuries (see *Alvarez v Prospect Hosp.*, 68 NY2d 320; *Reustle v Petraco*, 155 AD3d 658 [2d Dept 2017]). However, in opposition, plaintiff's expert affidavits raised triable issues of fact as to whether the defendants departed from good and accepted medical practice and whether such departure was a proximate cause of plaintiff's injuries (see *Reustle v Petraco*, 155 AD3d 658).

Public Health Law § 2801-d confers a private right of action on a patient in a nursing home for injuries sustained as the result of the deprivation of specified rights (see *Zeides v Hebrew Home for the Aged at Riverdale, Inc.*, 300 AD2d 178 [1<sup>st</sup> Dept 2002]). Relief is predicated on Public Health Law § 2803-c (3) (e), specifically deprivation of "the right to receive adequate and appropriate medical care" set forth in 10 NYCRR 415.12, including the failure to prevent the development of pressure sores (Id). "The statutory basis of liability is neither deviation from accepted standards of medical practice nor breach of a duty of care. Rather, it contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule, subject to the defense that the 'facility exercised all care reasonably

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necessary to prevent and limit the deprivation and injury to the patient' " (*Zeides v Hebrew Home for the Aged at Riverdale, Inc.*, 300 AD2d at 179; Public Health Law § 2801-d [1][2]).

Here, in support of its motion for summary judgment, Treetops submitted the affirmation of its expert physician, who opined that Treetops did not violate the various federal and state regulations set forth in the plaintiff's pleadings as the basis for a cause of action pursuant to section 2801-d, and that even if any regulations were violated, none of the alleged violations proximately caused decedent's injuries (see Public Health Law § 2801-d [1]; *Gold v Park Ave. Extended Care Ctr. Corp.*, 90 AD3d 833 [2d Dept 2011]). In opposition, plaintiff's expert opined, to the contrary, that Treetops violated decedent's right to receive adequate and appropriate care, including the failure to prevent the progression of pressure sores. Thus, issues of fact exist which warrant the denial of Treetop's motion for summary judgment.

Punitive damages are available under Public Health Law § 2801-d (2) where the patient has been deprived of a right or benefit and the deprivation "is found to have been willful or in reckless disregard of the lawful rights of the patient" (*Hairston v Liberty Behavioral Mgt. Corp.*, 138 AD3d 467 [1<sup>st</sup> Dept 2016]). To constitute gross negligence, "a party's conduct must smack of intentional wrongdoing or evince a reckless indifference to the rights of others" (internal citations omitted) (*Ryan v IM Kapco, Inc.*, 88 AD3d 682, 683 [2011]). A party is grossly negligent when it fails to exercise even slight care or slight diligence (see *Dolphin Holdings, Ltd. v Gander & White Shipping, Inc.*, 122 AD3d 901, 902 [2d Dept 2014]).

Here, Hudson Valley Hospital Center demonstrated prima facie entitlement to summary judgment dismissing any punitive damages claim against it. The plaintiff failed to raise a triable issue of fact in opposition.

However, although Treetops established prima facie entitlement to judgment as a matter of law dismissing the claim for punitive damages pursuant to Public Health Law 2801-d (*Everett v Loretto Adult Community, Inc.*, 32 AD3d 1273, 1274 [4<sup>th</sup> Dept 2006]; see *Anzalone v Long Is. Care Ctr., Inc.*, 26 AD3d 449, 450-451 [2d Dept 2006]) the plaintiff raised a triable issue of fact with regard to its treatment of the decedent in opposition.

The parties remaining contentions have been considered by the Court and found to be without merit.

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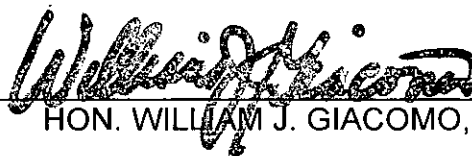
Accordingly, it is

**ORDERED** that the motion of the defendant Treetops Rehabilitation & Care Center, LLC for summary judgment dismissing the complaint, pursuant to CPLR 3212, is **DENIED** (motion seq. 1); and it is further

**ORDERED** that the motion of the defendant Hudson Valley Hospital Center for summary judgment, pursuant to CPLR 3212, dismissing the complaint is **GRANTED** solely to the extent of dismissing any claim for punitive damages and the motion is otherwise **DENIED** (motion seq. 2).

Counsels for all parties are directed to appear in the **Settlement Conference Part, room 1600**, at a date and time to be provided.

Dated: White Plains, New York  
May 5, 2020



HON. WILLIAM J. GIACOMO, J.S.C.