ORIGINAL

SHORT FORM ORDER

INDEX No. 619548/2016
CAL. No. 201902363M

PUBLISH

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 39 - SUFFOLK COUNTY

***PRESENT:***

Hon. DENISE F. MOLIA
Acting Justice of the Supreme Court

MOTION DATE 2/27/20 (001)
MOTION DATE 5/22/20 (002 & 003)
ADJ. DATE 6/26/20
Mot. Seq. # 001 MG
# 002 MotD
# 003 MG

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ALBERTA JACOBS and ALBERTA JACOBS AS EXECUTRIX OF THE ESTATE OF WILLIAM JACOBS, DECEASED,

Plaintiff,

- against -

FRED M. CARTER, II, M.D., NORTH FORK ORTHOPEDICS AND SPORTS MEDICINE, and EASTERN LONG ISLAND HOSPITAL,

Defendants.

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Upon the following papers read on these e-filed motions for a trial preference and for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers by plaintiff, filed February 4, 2020; by defendants Carter and North Fork, filed May 6, 2020; by defendant Easter Long Island Hospital, filed May 12, 2020 ; Notice of Motion/Order to Show Cause and supporting papers ___; Answering Affidavits and supporting papers by defendants Carter and North Fork, filed February 6, 2020; by defendant Eastern Long Island Hospital, filed February 14, 2020; by plaintiff, filed June 19, 2020 ; Replying Affidavits and supporting papers by plaintiff, filed February 18, 2020; by Eastern Long Island Hospital, filed June 25, 2020 ; Other _____; it is

***ORDERED*** that the motion by plaintiff, the motion by defendants Fred Carter, II, M.D., and North Fork Orthopedics and Sports Medicine, and the motion by defendant Eastern Long Island Hospital are consolidated for purposes of this determination; and it is further

***ORDERED*** that the motion by plaintiff for a trial preference is granted; and it is further

***ORDERED*** that the motion by defendants Fred Carter, II, M.D., and North Fork Orthopedics and Sports Medicine for summary judgment dismissing the complaint against it is granted to the extent of dismissing the cause of action for lack of informed consent, and is otherwise denied; and it is further

***ORDERED*** that the motion by defendant Eastern Long Island Hospital for summary judgment dismissing the complaint against it is granted.

This is a medical malpractice action brought to recover damages for injuries allegedly arising from the treatment of plaintiff Alberta Jacobs by defendants. The medical malpractice claims arise from Dr. Carter and North Fork Orthopedics and Sports Medicine's ("North Fork") treatment of plaintiff from June 8 to November 24, 2015, while she was a patient at Eastern Long Island Hospital ("ELIH") from September 24 to September 28, 2015. Plaintiff alleges that defendants were negligent in, among other things, improperly performing total hip arthroplasty, failing to properly position, align, and size the femoral head and acetebular components, failing to properly interpret x-rays, and failing to diagnose and treat hip dislocation. She also alleges a cause of action for lack of informed consent and negligent hiring. Plaintiff, suing on behalf of William Jacobs, her husband, also sues derivatively for loss of services.

Plaintiff moves for a trial preference on the ground that she is entitled to a special preference, because she is presently over 70 years old. Plaintiff submits, in support of the motion, a copy of her driver's license and the note of issue. In opposition, defendants argue that plaintiff may not stack trial preferences.

Pursuant to CPLR 3403 (a) (4), a party who has reached 70 years of age is automatically entitled to a preference (*see also* ***Andersen v Park Ctr. Assoc.***, 250 AD2d 473, 673 NYS2d 396[1st Dept 1998]; ***Borenstein v City of New York***, 248 AD2d 425, 668 NYS2d 949 [2d Dept 1998]; ***Milton Point Realty Co., Inc. v Haas***, 91 AD2d 678, 457 NYS2d 333 [2d Dept 1982]). Plaintiff's driver's license establishes that she was born in 1935 and has attained an age of more than 70 years.

Plaintiff is also entitled to a trial preference on the basis that the action is a medical malpractice action (CPLR 3403 [a] [5]). As the "stacking" of trial preferences is disfavored (***Green v Vogel***, 144 AD2d 66, 537 NYS2d 180 [2d Dept 1989]), a party is not automatically entitled to a second trial preference (***Stralberg v Mauer***, 166 AD2d 522, 560 NYS2d 804 [2d Dept 1990]). In this case, plaintiff has not been granted a trial preference based on the medical malpractice claims asserted, as she did not move for such a trial preference (CPLR 3403 [b]). Accordingly, plaintiff's motion is granted.

Dr. Carter and North Fork move for summary judgment dismissing the complaint against them on the grounds that they did not depart from good and accepted practices in the treatment rendered to plaintiff, and that such treatment did not cause her alleged injuries. Dr. Carter and North Fork submit, in support of the motion, copies of the pleadings and the bill of particulars. In opposition, plaintiff argues that triable issues of fact exist as to whether Dr. Carter departed from good and accepted practices in the

treatment rendered to plaintiff and whether such treatment caused her injuries. Plaintiff submits, in opposition, a redacted expert affirmation, and the medical records of Peter Sultan, M.D., and San Simeon by the Sound Center for Nursing and Rehabilitation.

ELIH moves for summary judgment dismissing the complaint against it on the grounds that it did not departure or deviate from the accepted standards of medical care, that it is not vicariously liable for the actions of plaintiff's private physician, and that it was not obligated to obtain her informed consent. EILH submits, among other things, copies of the pleadings, the bill of particulars, the transcripts of the deposition testimony of plaintiff and Dr. Carter, uncertified medical records of North Fork and ELIH, the affidavit of Delia Pispisa, and the affirmation of Jeffrey Richmond, M.D. Plaintiff does not oppose ELIH's motion.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

Healthcare providers owe a duty of reasonable care to their patients while rendering medical treatment; a breach of this duty constitutes medical malpractice (***Dupree v Giugliano***, 20 NY3d 921, 958 NYS2d 312, 314 [2012]; ***Scott v Uljanov***, 74 NY2d 673, 675, 543 NYS2d 369 [1989]; ***Tracy v Vassar Bros. Hosp.***, 130 AD3d 713, 13 NYS3d 226, 288 [2d Dept 2015]). To recover damages for medical malpractice, a plaintiff patient must prove both that his or her healthcare provider deviated or departed from good and accepted standards of medical practice and that such departure proximately caused his or her injuries (***Gross v Friedman***, 73 NY2d 721, 535 NYS2d 586 [1988]; ***Macancela v Wyckoff Heights Med. Ctr.***, 176 AD3d 795, 109 NYS3d 411 [2d Dept 2019]; ***Jagenburg v Chen-Stiebel***, 165 AD3d 1239, 85 NYS3d 558 [2d Dept 2018]; ***Bongiovanni v Cavagnuolo***, 138 AD3d 12, 24 NYS3d 689 [2d Dept 2016]; ***Stukas v Streiter***, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]). To establish a prima facie entitlement to summary judgment in a medical malpractice action, a defendant healthcare provider must prove, through medical records and competent expert affidavits, the absence of any such departure, or, if there was a departure, that such departure did not proximately cause the plaintiff's injuries (***Macancela v Wyckoff Heights Med. Ctr.***, *supra*; ***Wright v Morning Star Ambulette Servs., Inc.***, 170 AD3d 1249, 96 NYS3d 678 [2d Dept 2019]; ***Wodzenski v Eastern Long Is. Hosp.***, 170 AD3d 925, 96 NYS3d 80 [2d Dept 2019]; ***Jagenburg v Chen-Stiebel***, *supra*; ***Mitchell v Grace Plaza of Great Neck, Inc.***, 115 AD3d 819, 982 NYS2d 361 [2d Dept 2014]). The defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (***Wall v Flushing Hosp. Med. Ctr.***, 78 AD3d 1043, 912 NYS2d 77 [2d Dept 2010]; ***LaVecchia v Bilello***, 76 AD3d 548, 906 NYS2d 326 [2d Dept 2010]; ***Grant v Hudson Val. Hosp. Ctr.***, 55 AD3d 874, 866 NYS2d 726 [2d Dept 2008]). However, "bare conclusory assertions by defendants that they did not deviate from good and accepted

medical practices . . . do not establish that the cause of action has no merit so as to entitle defendants to summary judgment" (***DiLorenzo v Zaso***, 148 AD3d 1111, 1112, 50 NYS3d 503 [2d Dept 2017], quoting ***Winegrad v New York Univ. Med. Ctr.***, *supra* at 853; *see* ***Garcia-DeSoto v Velpula***, 164 AD3d 474, 77 NYS3d 887 [2d Dept 2018]).

Generally, a hospital may not be held vicariously liable for the acts of a physician who is not an employee of the hospital, but is one of a group of independent contractors (*see* ***Hill v St. Clare's Hosp.***, 67 NY2d 72, 79, 499 NYS2d 904, 909 [1986]; ***Castro v Durban***, 161 AD3d 939, 941-942, 77 NYS3d 680 [2d Dept 2018]; ***Keesler v Small***, 140 AD3d 1021, 35 NYS3d 356 [2d Dept 2016]). To establish its entitlement to judgment as a matter of law defeating a claim of vicarious liability, "a hospital must demonstrate that the physician alleged to have committed the malpractice was an independent contractor and not a hospital employee and that the exception to the general rule did not apply" (***Muslim v Horizon Med. Group, P.C.***, 118 AD3d 681, 683, 988 NYS2d 628 [2d Dept 2014]; *see also* ***Dupree v Westchester County Health Care Corp.***, 164 AD3d 1211, 84 NYS3d 176 [2d Dept 2018]; ***Dragotta v Southampton Hosp.***, 39 AD3d 697, 833 NYS2d 638 [2d Dept 2007]). Vicarious liability for the medical malpractice of an independent physician may be imposed under a theory of apparent or ostensible agency (*see* ***Hill v St. Clare's Hosp.***, *supra* at 80-81; ***Diller v Munzer***, 141 AD3d 628, 34 NYS3d 608 [2d Dept 2016]; ***Keesler v Small***, *supra*). In order to demonstrate such apparent agency, a plaintiff must set forth facts sufficient to support the conclusion that the hospital engaged in some misleading conduct upon which the plaintiff reasonably relied when the plaintiff decided to accept medical services from the hospital (*see* ***Keesler v Small***, *supra*; ***Muslim v Horizon Medical Group, P.C.***, 118 AD3d 681, 988 NYS2d 628 [2d Dept 2014]; ***Dragotta v Southampton Hosp.***, 39 AD3d 697, 833 NYS2d 638 [2d Dept 2007]). A court should consider "all attendant circumstances to determine whether the patient could properly have believed that the physician was provided by the hospital" (***Loaiza v Lam***, 107 AD3d 951, 952-953, 968 NYS2d 548 [2d Dept 2013]; *see* ***Sampson v Contillo***, 55 AD3d 588, 865 NYS2d 634 [2d Dept 2008]; ***Contu v Albert***, 18 AD3d 692, 795 NYS2d 740 [2d Dept 2005]). Moreover, a hospital may be held concurrently liable with a private physician if its employees commit independent acts of negligence, if its employees fail to inquire about the correctness of a private physician's orders that are contrary to normal practice, or if the hospital's words or conduct give the appearance and belief that the private physician has the authority to act on behalf of the hospital (*see* ***Dupree v Westchester County Health Care Corp.***, *supra*; ***Doria v Benisch***, 130 AD3d 777, 14 NYS3d 95 [2d Dept 2015]; ***Seiden v Sonstein***, 127 AD3d 1158, 7 NYS3d 565 [2d Dept 2015]; ***Zhuzhingo v Milligan***, 121 AD3d 1103, 995 NYS2d 588 [2d Dept 2014]; ***Fink v DeAngelis***, 117 AD3d 894, 986 NYS2d 212 [2d Dept 2014]; ***Aronov v Soukkary***, 104 AD3d 623, 960 NYS2d 462 [2d Dept 2013]; ***Corletta v Fischer***, 101 AD3d 929, 956 NYS2d 163 [2d Dept 2012]).

After making this prima facie showing, the burden shifts to the plaintiff to submit evidentiary facts or materials that raise a triable issue as to whether a deviation or departure occurred and whether this departure was a competent cause of plaintiff's injuries (***Williams v Bayley Seton Hosp.***, 112 AD3d 917, 977 NYS2d 395 [2d Dept 2013]; ***Makinen v Torelli***, 106 AD3d 782, 965 NYS2d 529 [2d Dept 2013]; ***Stukas v Streiter***, *supra*). The plaintiff need only raise a triable issue as to the elements on which the defendant met the prima facie burden (***Bueno v Allam***, 170 AD3d 939, 96 NYS3d 623 [2d Dept 2019]; ***Spiegel v Beth Israel Med. Ctr.-Kings Hwy. Div.***, 149 AD3d 1127, 53 NYS3d 166 [2d Dept

2017]; ***Hernandez v Hwaishienyi***, 148 AD3d 684, 48 NYS3d 467 [2d Dept 2017]). "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 defendant physician's summary judgment motion" (***Alvarez v Prospect Hosp.***, *supra* at 325; *see* ***Wright v Morning Star Ambulette Servs., Inc.***, *supra*; ***Spiegel v Beth Israel Med. Ctr.-Kings Hwy. Div.***, *supra*; ***Hernandez v Hwaishienyi***, *supra*). Summary judgment is inappropriate in a medical malpractice action where the parties present conflicting opinions by medical experts (***Macancela v Wyckoff Heights Med. Ctr.***, *supra*; ***Lefkowitz v Kelly***, 170 AD3d 1148, 96 NYS3d 642 [2d Dept 2019]; ***Lowe v Japal***, 170 AD3d 701, 95 NYS3d 363 [2d Dept 2019]; ***Henry v Sunrise Manor Ctr. for Nursing and Rehabilitation***, 147 AD3d 739, 46 NYS3d 649 [2d Dept 2017]).

Dr. Carter failed to establish a prima facie case of entitlement to summary judgment dismissing the medical malpractice claims against him, as the expert affirmation of Dr. Richmond failed to address all the specific allegations set forth in the bill of particulars (*see* ***E.K. v Tovar***, 185 AD3d 803, 2020 NY Slip Op 03904 [2d Dept 2020]; ***Lormel v Macura***, 113 AD3d 734, 979 NYS2d 345 [2d Dept 2014]). Dr. Carter and North Fork rely on the expert affirmation submitted in support of ELIH's motion. Dr. Richmond opined that the total hip arthroplasty was not contraindicated give the clinical and radiological evidence of plaintiff's osteoarthritis and degenerative joint disease, the abnormal findings on examination, and her persistent severe pain even after trials of pain medications and steroid injections. He determined that Dr. Carter followed plaintiff closely, issued orders, and acknowledged her physical therapy progress post-operatively. He opined that Dr. Carter's continuing order for physical therapy was not contraindicated based on his findings that there was no clinical or radiological evidence of dislocation. Dr. Richmond further opined that Dr. Carter was qualified to perform joint replacement surgeries and had performed two successful prior surgeries on plaintiff herself. However, Dr. Richmond failed to address plaintiff's allegation that Dr. Carter improperly performed total hip arthroplasty. North Fork failed to establish its prima facie entitlement to summary judgment, as it failed to demonstrate that it is not subject to vicarious liability (*cf.* ***Poplawski v Gross***, 81 AD3d 801, 917 NYS2d 247 [2d Dept 2011]). Having determined that Dr. Carter and North Fork failed to meet their prima facie burden as to the cause of action for medical malpractice, it is unnecessary to consider whether plaintiff's papers in opposition are sufficient to raise a triable issue of fact (***Winegrad v New York Univ. Med. Ctr.***, *supra*).

ELIH established a prima facie case of entitlement to summary judgment dismissing the medical malpractice claims against it by demonstrating that Dr. Carter was a private attending physician and that its employees did not commit independent acts of negligence (*see* ***Cynamon v Mount Sinai Hosp.***, 163 AD3d 923, 81 NYS3d 520 [2d Dept 2018]; ***Gattling v Sisters of Charity Med. Ctr.***, 150 AD3d 701, 53 NYS3d 665 [2d Dept 2017]; ***Poplawski v Gross***, *supra*). Dr. Carter testified that he was not an employee of ELIH. In addition, Ms. Pispisa stated in her affidavit that Dr. Carter was not an employee of ELIH. ELIH demonstrated the absence of a deviation or departure from good and accepted standards of medical practice in the medical treatment its staff rendered to plaintiff and that such medical treatment was not a proximate cause of her alleged injuries (*see* ***Jagenburg v Chen-Stiebel***, *supra*; ***Galluccio v Grossman***, 161 AD3d 1049, 78 NYS3d 196 [2d Dept 2018]; ***Bongiovanni v Cavagnuolo***, *supra*; ***Mitchell v Grace Plaza of Great Neck, Inc.***, *supra*; ***Faccio v Golub***, *supra*). By his affirmation, Dr. Richmond stated that he reviewed the pleadings, the bill of particulars, various medical records, and the

deposition testimony of plaintiff and Dr. Carter. He opined within a reasonable degree of medical certainty that ELIH did not depart from any good and accepted medical practice. He also opined that there is no evidence of a causal connection between the care rendered by ELIH's staff and plaintiff's alleged injuries.

Dr. Richmond opined that diagnosis, evaluation, interpretation of studies, and treatment involve surgical decisions and technique that rest solely with the skill and judgement of physicians. He explained that nurses, technicians, and therapists are not trained or licensed to perform surgery or render diagnoses. Dr. Richmond opined physicians have a duty to investigate the underlying causes of a condition and to recognize the symptoms and medical history, and plan appropriate treatment. He explained that physicians are responsible for developing a treatment plan and that only physicians may implement that plan by issuing orders for diagnostic tests, consultations, medications, and other forms of invasive treatments. Dr. Richmond also opined that the decision of whether to perform surgery and the technique used is within the sole discretion of the attending surgeon and does not required a hospital protocol.

Dr. Richmond opined that plaintiff was Dr. Carter's private patient since 2007. He stated that neither Dr. Carter nor John Rongo, Dr. Carter's physician's assistant, were employed by ELIH in September 2015. Dr. Richmond opined that Dr. Carter and Mr. Rongo exclusively managed plaintiff's pre-operative, intra-operative, and post-operative care. He stated that ELIH's staff was not obligated to make medical decisions or pass on the efficacy of the treatment plan formulated by Dr. Carter.

Dr. Richmond stated that plaintiff had pre-operative testing and was medically cleared for the total hip arthroplasty by her primary care physician and cardiologist shortly before the surgery occurred. He explained that plaintiff's pre-operative work included comprehensive histories and examinations, lab testing, and EKG. Dr. Richmond stated that Dr. Carter performed his own history and physical before and after surgery.

Dr. Richmond opined that ELIH's staff carried out all of Dr. Carter's orders. He further opined that ELIH's nurses performed thorough pre-operative assessments including medical and surgical histories, allergies, and medications. Dr. Richmond stated that ELIH's nurses and therapists continuously monitored, assessed, and documented plaintiff's signs, symptoms and physical therapy progress on a daily basis post-operatively. Dr. Richmond opined that a single post-operative x-ray was properly taken in the recovery pursuant to Dr. Carter's directive and within the standard of care.

Dr. Richmond explained that based on the post-operative x-ray and his intra-operative assessment, Dr. Carter was satisfied with the positioning and functioning of the prosthesis. Dr. Richmond opined that the orthopedic surgeon, not the radiologist, determines the proper positioning and articulation of the components with the anatomical construct. Dr. Richmond also opined that Dr. Carter's did not rely on the radiologist's report in formulating or implementing his treatment plan. He stated that the ultimate decision regarding the suitability of positioning belonged to Dr. Carter as plaintiff's orthopedic surgeon. He also stated that there was no radiological evidence of dislocation, misalignment, or a leg length discrepancy. Dr. Richmond opined that ELIH's radiology technicians,

nurses, and other employees do not read or interpret radiological studies. He stated that the technicians, nurses, and other employees merely facilitate the performance of radiological studies pursuant to the orders of treating physicians, such as Dr. Carter. He explained that the attending radiologist or orthopedic surgeon is responsible for interpreting and report x-ray findings.

ELIH having met its initial burden on the motion as to the cause of action for medical malpractice, the burden shifted to the non-moving parties to submit admissible evidence raising a triable issue of fact (*see* ***Jagenburg v Chen-Stiebel***, *supra*; ***Williams v Bayley Seton Hosp.***, *supra*; ***Makinen v Torelli***, *supra*; ***Stukas v Streiter***, *supra*). The non-moving parties have failed to raise a triable issue of fact, as no papers were submitted in opposition.

To establish a claim for medical malpractice based on lack of informed consent, a plaintiff must prove: (1) that the person providing the professional treatment failed to disclose alternatives to such treatment, and the alternatives, and failed to inform the plaintiff of the reasonably foreseeable risks of such treatment that a reasonable medical practitioner would have disclosed in the same circumstances; (2) that a reasonably prudent patient in the same situation would not have undergone the treatment had he or she been fully informed of the risks; and (3) that the lack of informed consent was a proximate cause of the plaintiff's injuries (*see* Public Health Law § 2805-d [1]; ***Wright v Morning Star Ambulette Servs., Inc.***, *supra*; ***Dyckes v Stabile***, 153 AD3d 783, 785, 61 NYS3d 110 [2d Dept 2017]; ***Schussheim v Barazani***, 136 AD3d 787, 24 NYS3d 756 [2d Dept 2016]). To establish the proximate cause element, a plaintiff must show that the operation, treatment or procedure for which there was no informed consent was a substantial cause of the injury (***Thompson v Orner***, 36 AD3d 791, 828 NYS2d 509 [2d Dept 2007]; ***Trabal v Queens Surgi-Center***, 8 AD3d 555, 779 NYS2d 504 [2d Dept 2004]; ***Mondo v Ellstein***, 302 AD2d 437, 754 NYS2d 579 [2d Dept 2003]).

ELIH established, prima facie, entitlement to summary judgment dismissing the cause of action for lack of informed consent against it on the grounds that it did not have a duty to obtain plaintiff's informed consent (*see* ***Cynamon v Mount Sinai Hosp.***, *supra*). When treated by a private attending physician, it is the duty of the physician, not the hospital, to obtain the patient's informed consent, unless it knew or should have known that the private physician was acting without such informed consent (*see* ***Cynamon v Mount Sinai Hosp.***, *supra*). Dr. Richmond opined that the obligation to obtain plaintiff's informed consent belonged to Dr. Carter, not ELIH.

Dr. Carter established, prima facie, entitlement to summary judgment dismissing the cause of action for lack of informed consent against him by demonstrating that he properly obtained such consent (*see* ***Tsimbler v Fell***, 123 AD3d 1009, 999 NYS2d 863 [2d Dept 2014]; ***Zapata v Buitriago***, 107 AD3d 977, 969 NYS2d 79 [2d Dept 2013]). Dr. Carter testified that he and plaintiff "discussed risks on a number of occasions before [the subject surgery]" and that he "would always read the consent form directly in front of the patient." Dr. Richmond also stated that Dr. Carter documented his informed consent discussion with plaintiff in his records and that the ELIH records contain a signed consent form. North Fork also established its prima facie entitlement to summary judgment dismissing the cause of action for lack of informed consent against it, as it is not vicariously liable in the absence of negligence by their employees (*see* ***Poplawski v Gross***, *supra*).

Plaintiff failed to oppose this branch of defendants' applications or specifically address such a cause of action (*see* ***Wright v Morning Star Ambulette Servs., Inc.***, *supra*; ***Stukas v Streiter***, *supra*). Therefore, the cause of action for lack of informed consent as asserted against the defendants is dismissed.

Accordingly, the motion by plaintiff is granted, the motion by Dr. Carter and North Fork Orthopedics and Sports Medicine is granted to the extent of dismissing the cause of action for lack of informed consent, and is otherwise denied, and the motion by Eastern Long Island Hospital is granted.

Dated: 9-1-20

Hon Denise F. Molia
A.J.S.C.

RST

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**