| **Hanrahan v Jakobleef** |
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| 2020 NY Slip Op 35803(U) |
| May 14, 2020 |
| Supreme Court, Bronx County |
| Docket Number: Index No. 21840/2017E |
| Judge: George J. Silver |
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Index №. 21840/2017E

**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF BRONX, PART 19A**

----------X

**CHARLES P. HANRAHAN**

**Index №. 21840/2017E**

**Plaintiff**

**-against-**

**WILLIAM A. JAKOBLEEF, M.D., MATTHEW STEVEN COLANTONI, D.O., CLAUDIA LIZETH QUINONEZ, M.D., JENNY KIM, N.P., WHITE PLAINS HOSPITAL MEDICAL CENTER, and MONTEFIORE MEDICAL CENTER,**

**Defendants**

----------X

The following papers numbered 1 to 3 were read on this motion for (Seq. No. **001**) for **SUMMARY JUDGMENT** (*see* CPLR § 2219 [a]):

| | |
|---|---|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | No(s). 1 |
| Answering Affidavit and Exhibits | No(s). 2 |
| Replying Affidavit and Exhibits | No(s). 3 |

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order of the court.

The following papers numbered 1 to 1 were read on this motion for (Seq. No. **002**) for **SUMMARY JUDGMENT** (*see* CPLR § 2219 [a]):

| | |
|---|---|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | No(s). 1 |
| Answering Affidavit and Exhibits | No(s). |
| Replying Affidavit and Exhibits | No(s). |

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order of the court.

**Dated:** May 14, 2020

**Hon.** George J. Silver
**GEORGE J. SILVER J.S.C.**

**1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☑ CASE STILL ACTIVE**
**2. MOTION IS..... ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER**

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**SUPREME COURT OF THE STATE OF NEW YORK**
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**CHARLES P. HANRAHAN**

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**Plaintiff**

**-against-**

**WILLIAM A. JAKOBLEEF, M.D., MATTHEW STEVEN COLANTONI, D.O., CLAUDIA LIZETH QUINONEZ, M.D., JENNY KIM, N.P., WHITE PLAINS HOSPITAL MEDICAL CENTER, and MONTEFIORE MEDICAL CENTER,**

**Defendants**
----------X
**HON. GEORGE J. SILVER:**

In this medical malpractice action, defendant CLAUDIA LIZETH QUINONEZ, M.D. ("Dr. Quinonez") moves, pursuant to CPLR §3212, for summary judgment and an order dismissing the complaint of plaintiff CHARLES P. HANRAHAN ("plaintiff") as against her. Separately, defendants WILLIAM JAKOBLEFF, M.D ("Dr. Jakobleff") and MONTEFIORE MEDICAL CENTER ("Montefiore") (collectively, "Montefiore defendants") move for the same relief. Plaintiff opposes Dr. Quinonez's application but does not oppose the application of the Montefiore defendants.

**BACKGROUND**

This lawsuit arises from claims of alleged malpractice relating to Dr. Quinonez, and others, alleged negligent treatment of plaintiff's acute congestive heart failure, resulting in the need to undergo extracorporeal membrane oxygenation ("ECMO"). Plaintiff alleges that defendants' collective departures proximately caused several injuries to plaintiff, including a permanent right foot drop.

On April 7, 2016, at 5:23PM, Jonathan Wynn, M.D. ("Dr. Wynn") referred plaintiff to White Plains Hospital for rapid atrial fibrillation, a history of congestive heart failure, and hemoptysis. At 6:43PM, plaintiff arrived at the emergency department of White Plains Hospital. At 6:56PM, Deidre Shields, R.N. ("Nurse Shields") triaged plaintiff and noted that he was sent by Dr. Wynn with shortness of breath and a new onset atrial fibrillation. Plaintiff was also noted as coughing up blood, and feeling shortness of breath for two days.

At 7:43PM, Michelle Goldberg, R.N. ("Nurse Goldberg"), following the order of defendant Matthew Colantoni, D.O., administered plaintiff the first, of three, intravenous shots of 10 milligrams of diltiazem. Dr. Quinonez, an internal medicine physician, testified that at 10:02PM, she wrote the order for Lasix, a

diuretic used to treat fluid retention and swelling caused by congestive heart failure, to be administered to plaintiff. She also testified that, around 9:30PM, she initially saw plaintiff in the emergency department:

Q. Based on the time when you ordered the Furosemide or Lasix, are you able to now tell when was the first time you saw this patient?

A. I would give it estimate maybe 30 minutes before, around there.

She further testified that by the time she saw plaintiff for the first time, he had received a total of 30 milligrams of diltiazem by intravenous push. Dr. Quinonez also testified that plaintiff had received 60 milligrams of diltiazem by intravenous drip:

Q. How much in terms of dosage did this patient receive by IV drip of Cardizem drip before you saw him?

A. I would have to look specifically. I don't know off the top of my head.

Q. Look through the records.

A. Yes. What was the question again?

(Whereupon, the referred to question was read back by the Reporter)

A. My best guess would be about 60, but I may be off in my calculation.

Q. 60 milligrams?

A. Yes.

As such, in less than two hours after the initial 10 milligrams of diltiazem, plaintiff received a total 90 milligrams of intravenous diltiazem. At 10:23PM, Nurse Goldberg, following Dr. Quinonez's order, administered an intravenous bolus of 20 milligrams of Lasix to plaintiff. At 10:32PM, Nurse Goldberg, following Dr. Quinonez's order, administered an intravenous bolus of 0.25 milligrams of digoxin, a medication used to treat heart failure and heart rhythm problems, to plaintiff. At 10:33PM, Nurse Goldberg, following Dr. Quinonez's order, administered 50 milligrams of metoprolol, a medication used to treat high blood pressure, chest pain, and heart failure, to plaintiff by mouth. When Dr. Quinonez ordered these medications, and when Nurse Goldberg administered them, plaintiff was receiving a diltiazem intravenous drip at 15 milligrams per hour.

Of note, in 2016, a "Diltiazem Continuous Infusion Titration Protocol" existed at White Plains Hospital, which lists adverse events from diltiazem, including, exacerbation of heart failure and AV block. The protocol also states precautions/ warnings including, but not limited to: (a) use caution in patients with impaired ventricular function since worsening congestive heart failure has been reported; and (b) avoid concurrent IV (intravenous) administration with drugs known to decrease peripheral resistance, intravascular volume, and myocardial contractility or conduction

Further, White Plains Hospital's "Diltiazem Continuous Infusion Titration Protocol" provides the manner by which diltiazem must be administered: (a) loading dose of approximately 15-20 milligrams IVP (IV push) over 2 minutes; (b) for an inadequate response, an additional dose of approximately 25-30 milligrams IVP 15 minutes after the initial dose; and (c) maintenance dose of 5-10 milligrams per hour and to be titrated to a maximum of 15 milligrams per hour.

The morning of April 8, 2016, plaintiff was found to be on cardiogenic shock, was endotracheally intubated, and underwent ECMO placement and intra-aortic balloon pump ("IABP") therapy to increase myocardial oxygen perfusion and indirectly increase cardiac output. He was subsequently transferred to Montefiore.

On April 8, 2016, Omar Saeed, M.D. ("Dr. Saeed"), an attending physician at Montefiore and specialist on heart failure, wrote on April 8, 2016: "Patient received several doses of diltiazem for rate control and eventually progressed to cardiogenic shock." Dr. Saeed's impression was "61-year-old male with acute on chronic decompensated HF [heart failure] progressed to severe cardiogenic shock in the setting of diltiazem administration." Dr. Saeed further notes that plaintiff had "shock, mainly cardiogenic with end organ dysfunction requiring ECMO placement/IABP placement." Similarly, Mary Donna M. Cruz, M.D., a fellow who was a specialist of heart failure at Montefiore, noted her impression as follows: "NICM [non-ischemic cardiomyopathy] in cardiogenic shock on VA ECMO support, peripherally cannulated, etiology could be medication induced with diltiazem in setting of cardiomyopathy, atrial fibrillation."

On May 24, 2016, plaintiff was discharged from Montefiore to The Burk Rehabilitation Hospital, where he was noted to have right foot drop. Upon discharge on June 10, 2016, his right foot drop did not resolve. Richard Novitch, M.D. noted: "He had a foot drop and weakness in the proximal right thigh consistent with femoral nerve injury from catheters [sic] effect on the neurovascular bundle."

**ARGUMENTS**

In support of his motion, Dr. Quinonez argues that there is nothing in the record to indicate that she committed malpractice during plaintiff's course of treatment. Dr. Quinonez annexes the affirmation of Stanley Schneller, M.D. ("Dr. Schneller") a plastic surgeon, who opines that the care and treatment rendered by Dr. Quinonez was completely consistent with the standard of care and did not cause or contribute to any of the alleged damages claimed in this lawsuit.

Specifically, Dr. Schneller explains that atrial fibrillation is an irregular rhythm from the upper chamber of the heart. Symptoms of atrial fibrillation may include heart palpitations (a sensation of a racing or flip flopping heartbeat), weakness, fatigue, dizziness, shortness of breath and chest pain. Dr. Schneller further states that atrial fibrillation is confirmed by performing an electrocardiogram (ECG or EKG), and that findings usually indicate that the ventricular rate is irregular. Dr. Schneller elaborates that atrial fibrillation is the most common cause of cardiac arrhythmia, and can have adverse consequences related to a reduction in cardiac output and increases the risk of stroke.

Dr. Schneller goes on to explain that when treating a patient with atrial fibrillation, the immediate goals are to slow the heart rate into a normal range and prevent blood clots that can lead to a stroke. Dr.

Schneller further states that atrial fibrillation is typically managed with medication to slow to heart rate and initiation of anti-coagulation therapy (medication to thin the blood). Dr. Schneller opines that this recommended course of treatment is what was done for plaintiff in 2015, at the time of his initial diagnosis. Nevertheless, Dr. Schneller notes that at the time that plaintiff presented to Dr. Quinonez, plaintiff had atrial fibrillation as well as cardiomyopathy, a disease of the heart muscle that makes it harder for the heart to pump blood to the rest of the body. In plaintiff's case, Dr. Schneller observes that at the time of plaintiff's course of treatment with Dr. Quinonez, plaintiff had discontinued use of metoprolol, a medication meant to control his atrial fibrillation and cardiomyopathy. As a result, Dr. Schneller explains that plaintiff's heart rate had increased, thereby weakening his heart muscles. It was therefore appropriate, in Dr. Schneller's opinion, to refer plaintiff to the emergency department for further work up and stabilization. It is also Dr. Schneller's opinion that the staff at White Plains Hospital properly gave plaintiff diltiazem as directed by Dr. Wynn. Dr. Schneller further opines that all doses of diltiazem that were administered were proper and done in accordance with the standard of care. Although the administration of diltiazem is cautioned in patients with heart failure, Dr. Schneller opines that it is not contraindicated just because a patient has or is suspected to have heart failure, especially when administered in a hospital setting where a patient is being monitored.

Dr. Schneller further opines that after plaintiff's initial doses of diltiazem were administered, Dr. Quinonez properly continued plaintiff on the diltiazem drip and appropriately gave him a dose of metoprolol and digoxin to improve his heart rate. It is Dr. Schneller's opinion that Dr. Quinonez's actions were consistent with good and accepted care as metoprolol is the second line of medicine used to slow ventricular response and digoxin likewise slows the ventricular response to atrial fibrillation. It is also Dr. Schneller's opinion that Dr. Quinonez appropriately ordered Lasix, a diuretic, to remove fluid in plaintiff system.

Dr. Schneller opines that the prudence of Dr. Quinonez's actions is evidenced by the fact that plaintiff was in stable condition following Dr. Quinonez's course of treatment. Dr. Schneller further explains that when plaintiff was transferred out of Dr. Quinonez's care, Dr. Quinonez was not required to provide explication instructions regarding the continued administration of diltiazem, as it is part of expected medical knowledge for providers to know when to commence and cease the administration of the medication.

Dr. Schneller also opines that the care that plaintiff received, including the uses of diltiazem, metoprolol, digoxin and Lasix, was within the standard of care. While there are other drugs that can slow one's heart rate, Dr. Schneller states that the medications administered were the most effective. As the priority for plaintiff's care was to bring his heart rate under control as quickly as possible, Dr. Schneller opines that it was appropriate for Dr. Quinonez to administer these particular medications to reduce plaintiff's heart rate.

With respect to informed consent allegations, it is Dr. Schneller's opinion that Dr. Quinonez provided adequate informed consent for all treatment administered to plaintiff, as there was no test or procedure administered to plaintiff that he would have reasonably refused. In sum, it is Dr. Schneller's opinion, within a reasonable degree of medical certainty, that the care and treatment rendered by Dr. Quinonez was, at all times, appropriate and consistent with the standards of good and accepted medical practice. Further, it is his opinion that no act or omission by Dr. Quinonez caused any of plaintiff's alleged injuries. To the contrary, Dr. Schneller states that plaintiff's outcome could have been far worse had Dr. Quinonez prematurely

discontinued the administration of the acknowledged medications to plaintiff. Therefore, Dr. Quinonez states that she is entitled to summary judgment and that all claims against her should be dismissed as a matter of law.

In opposition, plaintiff states that unresolved factual issues exist with respect to whether Dr. Quinonez departed from good and accepted standards of medical care and whether her departures constituted a proximate cause of plaintiff's pain and suffering. To be sure, plaintiff annexes the affirmation of an expert who opines, to a reasonable degree of medical certainty, that Dr. Quinonez departed from accepted standard of care by administering metoprolol and Lasix to plaintiff in contravention of White Plains Hospital's own protocol. Had Dr. Quinonez followed requisite protocols and not administered metoprolol and Lasix to plaintiff, plaintiff's expert further opines that plaintiff's injuries, including, but not limited to, cardiogenic shock, the need for ECMO, and a right foot drop, could have avoided. As plaintiff's expert offers opinions diametrically opposed to the statements espoused by Dr. Schneller, plaintiff contends that issues of fact exist regarding whether Dr. Quinonez departed from good and accepted standards of medical care and whether those departures constituted a proximate cause of plaintiff's alleged injuries.

In reply, Dr. Quinonez challenges the providence of plaintiff's expert affirmation, and reiterates that Dr. Quinonez is entitled to judgment in her favor.

Separately, the Montefiore defendants likewise move for summary judgment, arguing that the treatment rendered by them was at all times in accordance with good and accepted medical practice and that no actions or omissions the Montefiore defendants were the proximate cause of plaintiff s alleged injuries, including but not limited to a right foot drop. In support of the motion, the Montefiore defendants annex the affirmation of Amit Uppal, M.D. ("Dr. Uppal"), a physician board-certified in internal medicine and critical care, who opines that the care and treatment rendered by all staff at Montefiore was at all times in accordance with good and accepted medical practice, and that no actions or omissions performed by Montefiore staff while plaintiff was a patient at Montefiore were the proximate cause of plaintiff's alleged injuries, including but not limited to a right foot drop. To be sure, Dr. Uppal opines that during his admission at Montefiore, plaintiff was treated comprehensively and extensively, and all treatment provided was well within the standards of good and accepted medical practice.

With respect to Dr. Jakobleff, the Montefiore defendants annex the separate affirmation of Eugene Grossi, M.D. ("Dr. Grossi"), a board-certified cardiothoracic surgeon, who opines that plaintiff's ECMO was both indicated and necessary, and was the only possible therapy to save his life. Accordingly, Dr. Grossi opines that Dr. Jakobleff appropriately and properly performed the ECMO procedure on plaintiff. As Drs. Uppal and Grossi observe that there were no deviations of care by the Montefiore defendants that proximately caused plaintiff's alleged injuries, the Montefiore defendants submit that they are entitled to judgment in their favor.

Notably, plaintiff does not oppose the Montefiore defendants' motion for summary judgment.

**DISCUSSION**

In an action premised upon medical malpractice, a defendant doctor or hospital establishes prima facie entitlement to summary judgment when he or she establishes 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. Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2d Dept. 2009]; *Myers v Ferrara*, 56 AD3d 78, 83 [2d Dept. 2008]; *Germaine v Yu*, 49 AD3d 685 [2d Dept 2008]; *Rebozo v Wilen*, 41 AD3d 457, 458 [2d Dept 2007]; *Williams v Sahay*, 12 AD3d 366, 368 [2d Dept 2004]). In claiming that treatment did not depart from accepted standards, the movant must provide an expert opinion that is detailed, specific and factual in nature (*see e.g., Joyner-Pack v. Sykes*, 54 AD3d 727, 729 [2d Dept2008]). The opinion must be based on facts within the record or personally known to the expert (*Roques*, 73 AD3d at 207, *supra*). Indeed, it is well settled that expert testimony must be based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming material facts not supported by record evidence (*Cassano v Hagstrom*, 5 NY2d 643, 646 [1959]; *Gomez v New York City Hous. Auth.*, 217 AD2d 110, 117 [1st Dept 1995]; *Matter of Aetna Cas. & Sur. Co. v Barile*, 86 AD2d 362, 364-365 [1st Dept 1982]). Thus, a defendant in a medical malpractice action who, in support of a motion for summary judgment, submits conclusory medical affidavits or affirmations, fails to establish prima facie entitlement to summary judgment (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Cregan v Sachs*, 65 AD3d 101, 108 [1st Dept 2009]; *Wasserman v Carella*, 307 AD2d 225, 226 [1st Dept 2003]). Further, medical expert affidavits or affirmations, submitted by a defendant, which fail to address the essential factual allegations in the plaintiff's complaint or bill of particulars do not establish prima facie entitlement to summary judgment as a matter of law (*Cregan*, 65 AD3d at 108, *supra*; *Wasserman*, 307 AD2d at 226, *supra*). To be sure, the defense expert's opinion should state "in what way" a patient's treatment was proper and explain the standard of care (*Ocasio-Gary v. Lawrence Hosp.*, 69 AD3d 403, 404 [1st Dept 2010]). Further, it must "explain 'what defendant did and why'" (*id. quoting Wasserman v. Carella*, 307 AD2d 225, 226 [1st Dept 2003]).

Once the defendant meets its burden of establishing prima facie entitlement to summary judgment, it is incumbent on the plaintiff, if summary judgment is to be averted, to rebut the defendant's prima facie showing (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The plaintiff must rebut defendant's prima facie showing without "[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence" (*id.* at 325). Specifically, to avert summary judgment, the plaintiff must demonstrate that the defendant did in fact commit malpractice and that the malpractice was the proximate cause of the plaintiff's injuries (*Coronel v New York City Health and Hosp. Corp.*, 47 AD3d 456 [1st Dept. 2008]; *Koeppel v Park*, 228 AD2d 288, 289 [1st Dept. 1996]). To meet the required burden, the 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 (*Thurston*, 66 AD3d at 1001, *supra*; *Myers*, 56 AD3d at 84, *supra*; *Rebozo*, 41 AD3d at 458, *supra*).

**Dr. Quinonez**

Here, with respect to Dr. Quinonez, based on the evidence submitted, including medical records, deposition transcripts, and Dr. Schneller's expert affirmation based upon the same, the court finds that defendant has established a prima facie defense entitling her to summary judgment (*Balzola v Giese*, 107

AD3d 587 [1st Dept 2013]). To be sure, Dr. Schneller opines that the care and treatment rendered by Quinonez at all times comported with good and accepted medical practice and that nothing that Dr. Quinonez did, or did not do, was the proximate cause of plaintiff's alleged injuries. Significantly, Dr. Schneller opines, to a reasonable degree of medical certainty, that Dr. Quinonez properly continued plaintiff on a diltiazem drip and appropriately gave him doses of metoprolol and digoxin to control his heart rate. It is Dr. Schneller's opinion that Dr. Quinonez's actions were consistent with good and accepted care as metoprolol is the second line of medicine used to slow ventricular response and digoxin likewise slows the ventricular response to atrial fibrillation. It is also Dr. Schneller's opinion that Dr. Quinonez appropriately ordered Lasix, a diuretic, to remove fluid in plaintiff. Dr. Schneller opines that the efficacy of Dr. Quinonez's actions is evidenced by the fact that plaintiff returned to stable condition while in Dr. Quinonez's care. Dr. Schneller further explains that when plaintiff was transferred out of Dr. Quinonez's care, Dr. Quinonez was not required to provide instruction regarding the continued administration of diltiazem, as it is part of expected medical knowledge for providers to know when to commence and cease the administration of the medication. Notably, Dr. Schneller also opines that the care that plaintiff received, which included the uses of diltiazem, metoprolol, digoxin and Lasix, was within the standard of care. While there are other drugs that can slow one's heart rate, Dr. Schneller states that the medications administered were the most effective. As the priority for plaintiff's care was to bring his heart rate under control as quickly as possible, Dr. Schneller opines that it was appropriate for Dr. Quinonez to administer these particular medications to reduce plaintiff's heart rate.

Importantly, Dr. Schneller challenges plaintiff's informed consent allegations by positing opinion that Dr. Quinonez provided adequate information to plaintiff with respect to all treatment administered. As Dr. Schneller's opinions are predicated upon ample support within the record, including specific review of the relevant medical records and deposition testimony, Dr. Quinonez has shown that plaintiff was treated in full accord with good and accepted standards of medical care, and that no actions on Dr. Quinonez's part proximately caused the alleged injuries at issue in this lawsuit.

In opposition to Dr. Quinonez's prima facie showing, plaintiff raises triable issues of fact to preclude summary judgment. At the outset, the court is unpersuaded by Dr. Quinonez's challenges to the technical merits of plaintiff's expert affirmation. The court has reviewed plaintiff's expert's original, unredacted affirmation, and finds that the affirmation comports with all necessary requirements, including those set forth in CPLR §3101(d). Turning to the merits of plaintiff's expert's affirmation, the court finds that plaintiff's expert provides a suitable challenge to Dr. Schneller's opinions surrounding the administration of metoprolol and Lasix. To be sure, plaintiff's expert states, with adequate support within the record, that Dr. Quinonez's administration of metoprolol and Lasix to plaintiff was in direct contravention of White Plains Hospital's own hospital protocols, and therefore was a deviation from the appropriate standard of care. Relevantly, plaintiff's expert states that had Dr. Quinonez followed requisite protocols and not administered metoprolol and Lasix to plaintiff, plaintiff's injuries, including, but not limited to, cardiogenic shock, the need for ECMO, and a right foot drop, could have avoided. In plaintiff's expert's view, Dr. Quinonez could have obviated some of plaintiff's injuries by cautioning against the use of metoprolol and Lasix.

Plaintiff's expert affirmation on that point presents a credible contrast to Dr. Schneller's contention that plaintiff's eventual outcome was unattributable to negligence. To be sure, plaintiff' expert surmises that

the overall course of treatment could have been handled differently, and because it was not, plaintiff remains in a compromised state.

When tasked with differing opinions on the ultimate issue of causation, a court cannot substitute the fact-finding role of a jury with its own judgment. Indeed, while Dr. Schneller states that the administration of metoprolol and Lasix to plaintiff likely avoided a worse outcome for plaintiff, plaintiff's expert opines that plaintiff's present outcome could have been circumvented entirely had Dr. Quinonez ceased administration of those same medications. As plaintiff's expert's affirmation, like the affirmation of Dr. Schneller, is predicated upon support within the record, it raises triable issues of fact that are sufficient to defeat Dr. Quinonez's motion on the points highlighted. Indeed, the court finds Dr. Quinonez's contention that plaintiff's expert affirmation is "conclusory" and "speculative" unavailing. In reaching his conclusions, plaintiff's expert affirms that he relied upon complete copies of material evidence within the record.

Where, as here, the affirmation of defendant's expert is credibly challenged on material points by plaintiff's own expert affirmation, there is insufficient evidence to credit the conclusions of one expert over the conclusions of another. Indeed, the weight to afford the respective expert's conclusions is for a jury, not this court, to decide. To be sure, the very fact that plaintiff's expert's opinions differ from those proffered by Dr. Schneller illustrates the existence of issues of triable fact. "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions" (*Elmes v. Yelon*, 140 AD3d 1009 [2d Dept 2016] [citations and internal quotation marks omitted]). Instead, the conflicts must be resolved by the fact finder (*id*.). Indeed, it is well-established that summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions (*Barbuto v Winthrop Univ. Hosp*., 305 AD2d 623, 624 [2d Dept 2003]), and the experts' competing opinions on causation present an issue of fact for a jury to decide (*Carnovali v Sher*, 121 AD3d 552 [1st Dept 2014]).

However, plaintiff's opposition notably does not challenge Dr. Quinonez's prima facie showing on some issues separate from the administration of metoprolol and Lasix. As highlighted by Dr. Quinonez, plaintiff's expert does not counter Dr. Quinonez's prima facie showing on the issues of the negligent administration of digoxen, the negligent administration of intravenous fluids, the failure to timely call for consults, the failure to properly monitor plaintiff's hemodynamic status, and the performance of invasive hemodynamic monitoring on plaintiff, such as central line placement, arterial line placement, and arterial punctures, without consent. On the issue of informed consent, it is axiomatic that Dr. Quinonez established, through the medical records, Dr. Schneller's affirmation, and the parties' deposition testimony, that Dr. Quinonez obtained plaintiff's informed consent, and that no reasonable patient in plaintiff's position would have refused potentially life-saving medical intervention. Because nothing in the record affirmatively refutes Dr. Quinonez's prima facie showing on this point, and because plaintiff does not oppose this branch of defendant's motion, the branch of Dr. Quinonez's motion seeking summary judgment dismissing the cause of action alleging lack of informed consent is granted, and that cause of action is dismissed (*Rebozo v Wilen*, 41 AD3d 457, 459 [2d Dept 2007]). The same applies to the other claims highlighted above, as plaintiff's expert has failed to address the specifics of Dr. Schneller's assertions with respect to these allegations of negligence, and that therefore has failed to raise a triable issue of fact regarding those claims. As such, the referenced claims are dismissed.

**The Montefiore Defendants**

As with Dr. Quinonez, the Montefiore defendants have established a prima facie defense entitling them to summary judgment based on the evidence submitted, including medical records, deposition transcripts, and Drs. Uppal and Grossi's expert affirmations. To be sure, Dr. Uppal opines that during his admission a Montefiore, plaintiff was treated comprehensively and extensively, and all treatment provided was well within the standards of good and accepted medical practice. In addition, Dr. Uppal observes that no actions or omissions performed by Montefiore staff while plaintiff was a patient at Montefiore, were the proximate cause of plaintiff's alleged injuries, including but not limited to a right foot drop.

Separately, Dr. Grossi opines that Dr. Jakobleff appropriately and properly performed the ECMO procedure on plaintiff. As Drs. Uppal and Grossi's opinions are predicated upon ample support within the record, including specific review of the relevant medical records and deposition testimony, the Montefiore defendants have shown that plaintiff was treated in full accord with good and accepted standards of medical care, and that no actions on the Montefiore defendants' part proximately caused the alleged injuries at issue in this lawsuit.

Since plaintiff does not challenge the Montefiore defendants' prima facie showing, the Montefiore defendants are entitled to judgment in their favor.

Based on the foregoing, it is hereby

ORDERED that CLAUDIA LIZETH QUINONEZ, M.D.'s motion for summary judgment is granted to the extent that plaintiff's claims of malpractice predicated upon the negligent administration of digoxen, the negligent administration of intravenous fluids, the failure to timely call for consults, the failure to properly monitor plaintiff's hemodynamic status, and the performance of invasive hemodynamic monitoring on plaintiff, such as central line placement, arterial line placement, and arterial punctures, without consent, are hereby dismissed; and it is further

ORDERED that CLAUDIA LIZETH QUINONEZ, M.D.'s motion for summary judgment is denied to the extent that plaintiff's have raised triable issues of fact concerning the negligent administration of metoprolol and Lasix; and it is further

ORDERED that defendants WILLIAM JAKOBLEFF, M.D and MONTEFIORE MEDICAL CENTER's motion for summary judgment is granted, unopposed; and it is further

ORDERED that the respective moving defendants are directed to file and serve a copy of this decision and order, with notice of entry, within 20 days of its issuance; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant CLAUDIA LIZETH QUINONEZ, M.D. to the extent indicated; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendants WILLIAM JAKOBLEFF, M.D and MONTEFIORE MEDICAL CENTER dismissing this case as to them in its entirety; and it is further

Index №. 21840/2017E

ORDERED that the parties are directed to appear for a virtual or in-person conference before the court (the parties will be further notified of the conferencing approach in advance of the designated date) on June 26, 2020 (time to be determined).This constitutes the decision and order of the court.

**Dated**: May 14, 2020

**GEORGE J. SILVER, J.S.C.**