Hoffman v Taubel
2021 NY Slip Op 31523(U)
April 30, 2021
Supreme Court, New York County
Docket Number: 805302/2015
Judge: John J. Kelley
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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** ***Justice***

PART **IAS MOTION 56EFM**

---X

SHELLYANN HOFFMAN AND OLUJIMI JOLAOSHO,

Plaintiffs,

- v -

DEBRA TAUBEL, M.D., TIRSIT ASFAW, M.D., and NEW YORK PREBYTERIAN HOSPITAL,

Defendants.

---X

INDEX NO. 805302/2015

MOTION DATE 04/07/2021

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 134, 135, 136, and 137 (Motion 003)

were read on this motion to/for SUMMARY JUDGMENT.

In this action to recover damages for medical malpractice based on departures from good and accepted medical practice and lack of informed consent, the defendants move pursuant to CPLR 3212 for summary judgment dismissing the complaint. The plaintiffs oppose the motion. The motion is granted only to the extent of dismissing the cause of action alleging lack of informed consent, and the motion is otherwise denied. In opposition to the defendants' prima facie showing of their entitlement to judgment as a matter of law, the plaintiffs raised triable issues of fact as to whether the defendants departed from good and accepted medical practice in transecting Shellyann Hoffman's right ureter in the course of a hysterectomy and in failing to provide adequate post-operative care, and whether the defendants' malpractice in this regard caused her to sustain the injuries that she claimed.

On September 8, 2014, Hoffman, who was then 37 years of age, had been pregnant for 23 weeks. On that date, she was admitted to the defendant New York Presbyterian Hospital (NYPH) complaining of decreased fetal movement. She was diagnosed with intra-uterine fetal

demise, that is, a miscarriage. On September 9, 2014, she underwent a hysterectomy at NYPH, which was performed by the defendant Debra Taubel, M.D., with assistance from the defendant Tirsit Asfaw, M.D. In the course of the procedure, Hoffman's right ureter was transected. This condition was not diagnosed until more than one week later. Upon diagnosis, a temporary nephrostomy tube was inserted into Hoffman, she was not discharged from NYPH until September 21, 2014, and she deferred definitive repair of her right ureter until November 2014.

The plaintiffs allege that Hoffman sustained an injury to her right ureter as a proximate result of medical malpractice committed by Taubel during the surgery, and that Taubel and Asfaw departed from good and accepted practice in failing to recognize that the ureter had been transected as they completed the procedure, thus delaying diagnosis, treatment, and repair of the ureter. The plaintiffs assert that NYPH is vicariously liable for the malpractice of Taubel and Asfaw, who were its employees, and also because its hospital staff failed to timely diagnose and treat the transection during her post-operative stay at the hospital, despite indications strongly suggesting a urinary tract injury.

In their bill of particulars as to Taubel, the plaintiffs assert that Taubel departed from good and accepted medical practice

> "in negligently performing a supra cervical hysterectomy [SCH] on September 9, 2014; in failing to timely and properly diagnose a ureteral injury; in causing Plaintiff the need to undergo further surgical intervention; in causing plaintiff need to have a percutaneous nephrostomy tube placed; in failing to timely and properly detect, diagnose, address and treat damage to the ureter caused during hysterectomy; in failing to implement precautions based upon performance of SCH at 23 weeks including use of ureteral catheters; in failing to timely and properly locate and identify the location of the ureters during the performance of the subject hysterectomy and protect same from injury; in negligently failing to timely and properly evaluate and assess the ureters during the course of the surgery and prior to closure; in failing to have urologist present at time of hysterectomy to fully evaluate the ureters prior to closure; in negligently causing a ureter injury; in negligently causing a ureteral injury; in failing to timely and properly perform a cystoscopy; in failing to timely and properly perform an examination and evaluation of plaintiff's ureteral post operative functioning."

The plaintiff further alleged that Taubel committed departures

> "in negligently failing to timely and properly diagnose, address, treat and follow up upon plaintiff's complaints, condition, signs and symptoms; in failing to timely and properly detect, diagnose and treat plaintiff's condition, complaints, signs and symptoms; in failing to properly solicit a medical history; in failing to timely and properly advise, inform and educate plaintiff as to the risks, benefits and alternatives to the subject procedure; in negligently failing to conduct indicated tests and studies or refer for same; in failing to have clear identification of the ureter throughout . . . the operative field; in failing to timely and properly determine and address the cause of plaintiff s complaints, condition, signs and symptoms; in misdiagnosing plaintiff's condition; in failing to formulate a proper differential diagnosis; in failing to conduct a timely and proper intra operative evaluation of ureteral competency; in failing to timely and properly detect, diagnose, treat and repair a Right Ureteral Injury; in failing to timely and properly appreciate and address results of diagnostic studies performed and laboratory tests ordered; in failing to timely order further laboratory work ups; in negligently failing to obtain informed consent from plaintiff; in failing to ensure that proper referrals were made and necessary consults ordered; in failing to order or take the proper examinations and procedures to determine the nature and extent of ailments and condition from which plaintiff is and was suffering; in failing post operative[ly] to perform a timely and proper cystoscopy and in failing to timely and properly perform ureteral assessment and evaluation post operatively; [and] in failing to timely and properly perform intra operative evaluation of ureteral competency"

The plaintiffs also asserted that Hoffman

> "should have been timely and properly informed and educated as to the risks, benefits and alternatives to the subject procedures. Had the Plaintiff or any reasonable person, been informed of the aforesaid risks, benefits, and alternatives to the care, procedures and treatment performed, she would not have consented to the aforesaid medical care and treatment or lack thereof."

The plaintiffs' bill of particulars as to the Asfaw alleges identical or similar departures.

The plaintiffs' bill of particulars and supplemental bill of particulars as to NYPH alleges that it engaged in the same departures as Tabuel and Afsaw, and further asserts that

> "Said defendant is vicariously liable for the negligent acts/omissions of its agents, servants, staff and employees. Plaintiff is unable to particularize by name any such individuals presently other than captioned defendants DEBRA TAUBEL, M.D., TIRSIT ASFAW, M.D. and for Robert Setton, M.D., Andrea Hubschmann, M.D., Allison Boester MD and for post op obstetrical team, the "antepartum" team and the primary team for follow up care from the surgery, which included the gynecological or gynosurgery team, and those individuals whose names appeared within said defendants' chart for the preoperative, intra-operative and post operative period."

In support of their motion, the defendants submit the affirmation of Toby Chai, M.D., an expert in gynecologic urology. Chai explained that a ureter injury is a well-known and accepted

risk of pelvic surgery, including a hysterectomy. In addition, he opined, to a reasonable degree of medical certainty, that the defendants properly identified all anatomical structures for the purpose of protecting them from the surgery, and that the measures taken by defendants to minimize the risk of injury to all relevant anatomical structures, including the ureters, met the standard of care. With respect to Hoffman's postoperative care, the expert further opined that there was no reason to suspect an intraoperative ureteral injury, or that the ureter was injured during the small window of time immediately after the surgery, when the treatment for the ureteral injury could have been more expeditiously given. Dr. Chai further asserted that there are no long-term or residual effects of the transection, and that any urinary tract problems of which Hoffman currently complains are due to depression and the use of prescription medications.

Based on Taubel's deposition testimony, Dr. Chai concluded that Taubel provided Hoffman with a complete explanation of the risks and benefits of the hysterectomy, including the potential risk of injury to adjacent or nearby organs and anatomical structures.

In opposition to the defendants' motion, the plaintiffs submitted the affirmations of one board-certified urologist and one board-certified obstetrician/gynecologist (OB/GYN), both of whom opined that, within a reasonable degree of medical certainty, the defendants departed from good and accepted practice, and that such departures were the proximate cause of Hoffman's injuries and sequela.

The urologist first noted that NYPH's chart reflected an "iatrogenic right ureteral transection during hysterectomy" and "unrecognized iatrogenic Right Ureteral transection," as well as a diagnosis of "Intraoperative Ureteral Injury." The chart further noted that a retrograde pyelogram, performed nine days after the hysterectomy, revealed a "[c]omplete or near transection of distal right ureter." The urologist explained that, merely because the transection of a ureter is a known risk of a hysterectomy, it does not follow that a surgeon or a surgeon's

assistant is excused from properly performing the procedure. In this regard, the urologist concluded that

> ` "Taubel departed from good and accepted medical practice by failing to use proper care to identify and protect the ureters during the surgery and in doing so Dr. Taubel negligently transected the right ureter.
>
> "To a reasonable degree of medical certainty, it is my opinion that all proper precautions were *not* taken to avoid injury to the ureters in accord with the standard of care at the time . . ."

(emphasis added).

Specifically, the urologist opined that, contrary to Dr. Chai's opinion, the applicable standard of care required the defendants to employ prophylactic ureteral catheters during the procedure in order to protect and preserve the ureter, particularly inasmuch as Hoffman was a high-risk patient by virtue of being in her 23rd week of pregnancy.

> "Ms. Hoffman had increased risk factors for iatrogenic ureteral injury including uterine size at 23 weeks gestational age. Per the standard of care at that time uterine size equal to or greater than 12 weeks gestational age predisposed a patient to iatrogenic ureteral injury. In this instance, the threshold for high risk due to uterine size (i.e. =/> 12 weeks) was nearly double as this patient was at 23 weeks gestational age. The pre-operative diagnosis of placenta accreta, where the placenta attaches itself too deeply and too firmly into the uterus, further predisposed the patient to risk for ureteral injury and the patient's surgical history of a prior cesarean section, predisposing her to adhesions, put her at additional risk for ureteral injury."

Hence, the urologist concluded that prophylactic ureteral catheters were indicated for Hoffman in accordance with the standard of care applicable at the time of her surgery. The urologist explained that the benefit of using catheters was to prevent ureteral injury by aiding in the identification of the left and right ureters and to facilitate intra-operative detection through enhanced palpation and enhanced visual inspection, as well as to allow for intra-operative repair of ureteral injuries. The urologist concluded that the benefits of employing prophylactic ureteral catheters outweighed any risks.

The plaintiffs' retained urologist expressly rejected the defense expert's conclusion that the use of catheters in this case would have increased Hoffman's risk of injury, or that

Hoffman's "soft ureters" presented any additional risks of ureteral perforation. As the expert explained it, a woman's ureters become softer and more flexible and pliable during pregnancy, thus mitigating any inherent risk of perforation. Consequently, it was the urologist's opinion, to a reasonable degree of medical certainty, that Taubel departed from good and accepted medical practice in failing to identify and protect the ureters by utilizing prophylactic ureteral catheters, and that such departure was a substantial factor in causing the right ureteral transection; the expert opined that use of prophylactic ureteral catheters would likely have prevented the right ureter transection injury by enhancing identification of the ureters pathways, both visually and by palpation, thereby protecting the ureters.

As to the surgical techniques employed by the defendants, the urologist noted that, although the hospital chart reflected that the left ureter was identified, it does not reflect that the right ureter was ever identified. The urologist concluded that a note referring to "taking down the right side in similar fashion" does not implicitly suggest that the right ureter was indeed identified. The expert came to this conclusion, in part, by citing to Asfaw's deposition testimony, in which she stated that, had the right ureter in fact been identified, "of course" it would have been reflected in the notes. Hence, the plaintiffs' expert urologist concluded that Taubel departed from the standard of care by failing to identify Hoffman's ureters bilaterally in the course of the procedure in order to protect both of them.

The urologist also concluded that, based on a review of the hospital chart, Asfaw departed from good and accepted medical practice by failing to assure the integrity of the urinary tract post-operatively, and that such responsibility was within Asfaw's domain. The expert noted that Taubel testified at her deposition that she had requested Asfaw to "be there when we looked at the bladder and dissected the bladder off the uterus to make sure the integrity of the system was maintained," and that the ureters were part of that system. The expert further noted that Asfaw agreed that this was part of her responsibility. The expert explained that there were no notes in the chart that reflect whether Asfaw discharged this

responsibility, and Afsaw testified that she had no independent recollection of assuring the post-operative integrity of the urinary tract system.

The expert urologist thus concluded that the defendants' failure to make proper observations of the right ureter immediately after the surgical procedure, particularly in light of Hoffman's increased risk of ureteral injury, led to their failure to suspect the presence of a transected ureter that should have been obvious, and that this failure, in turn, led them to conclude that no further diagnostic testing, such as a cystoscopy with contrast, was indicated. The expert further opined that, had the defendants performed such a diagnostic test, they would have diagnosed the transection far earlier than it was diagnosed. As the urologist explained it,

> "diagnosis during that time window would have allowed for definitive repair thereby obviating the need in this instance of the temporary nephrostomy tube and the need to defer definitive repair to November 2014 which in turn would have prevented the need for the November 2014 hospital admission and any resulting sequela."

The expert came to the conclusion that, in light of the foregoing, NYPH's staff deviated from good and accepted practice in the post-operative care that they rendered to Hoffman, particularly because blood work performed during the first few days after surgery reflected an increase in creatinine levels, which is a common consequence of ureteral injury.

Finally, the plaintiffs' urologist concluded that the ureteral transection and delayed diagnosis, treatment, and repair thereof, proximately caused Hoffman to endure pain and blood pressure irregularities in the short term, and residual, long-term problems with her urinary tract and urinary functions.

The affirmation of the plaintiffs' retained OB/GYN essentially repeated the underlying facts set forth in the urologist's affirmation, and arrived at identical conclusions and opinions as to both the departures committed by the defendants and whether they proximately caused injury to Hoffman.

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to

eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (*see* CPLR 3212). The facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In other words, "[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]). Once the movant meets his burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (*see Vega v Restani Constr. Corp.*, 18 NY3d at 503). A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *Medina v Fischer Mills Condo Assn.,* 181 AD3d 448, 449 [1st Dept 2020]).

"The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even 'arguable'" (*De Paris v Women's Natl. Republican Club, Inc.*, 148 AD3d 401, 403-404 [1st Dept 2017]; *see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). Thus, a moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case. He or she must affirmatively demonstrate the merit of his or her defense (*see Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism,* 135 AD3d 458, 462 [1st Dept 2016]).

"To sustain a cause of action for medical malpractice, a plaintiff must prove two essential elements: (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury" (*Frye v Montefiore Med. Ctr.*, 70 AD3d 15, 24 [1st Dept 2009]; *see Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Elias v Bash*, 54

AD3d 354, 357 [2d Dept 2008]; *DeFilippo v New York Downtown Hosp.*, 10 AD3d 521, 522 [1st Dept 2004]). A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d at 24) or by establishing that the plaintiff was not injured by such treatment (*see McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; *see generally Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]).

To satisfy the burden, a defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific, and factual in nature (*see Roques v Noble*, 73 AD3d at 206;.*Joyner-Pack v. Sykes*, 54 AD3d 727, 729 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]). If the expert's opinion is not based on facts in the record, the facts must be personally known to the expert and, in any event, the opinion of a defendant's expert should specify "in what way" the patient's treatment was proper and "elucidate the standard of care" (*Ocasio-Gary v Lawrence Hospital*, 69 AD3d 403, 404 [1st Dept 2010]). Stated another way, the defendant's expert's opinion must "explain 'what defendant did and why'" (*id.*, quoting *Wasserman v Carella*, 307 AD2d 225, 226, [1st Dept 2003]).

Furthermore, to satisfy his or her burden on a motion for summary judgment, a defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043 [2d Dept 2010]; *Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874 [2d Dept 2008]; *Terranova v Finklea*, 45 AD3d 572 [2d Dept 2007]).

Once satisfied by the defendant, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact by submitting an expert's affidavit or affirmation attesting to a

departure from accepted medical practice and opining that the defendant's acts or omissions were a competent producing cause of the plaintiff's injuries (*see Roques v Noble*, 73 AD3d at 207; *Landry v Jakubowitz*, 68 AD3d 728 [2d Dept 2009]; *Luu v Paskowski*, 57 AD3d 856 [2d Dept 2008]). Thus, to defeat a defendant's prima facie showing of entitlement to judgment as a matter of law, a plaintiff must produce expert testimony regarding specific acts of malpractice, and not just testimony that contains "[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice" (*Alvarez v Prospect Hosp.*, 68 NY2d at 325; *see Frye v Montefiore Med. Ctr.*, 70 AD3d at 24). In most instances, the opinion of a qualified expert that the plaintiff's injuries resulted from a deviation from relevant industry or medical standards is sufficient to preclude an award of summary judgment in a defendant's favor (*see Murphy v Conner*, 84 NY2d 969, 972 [1994]; *Frye v Montefiore Med. Ctr.*, 70 AD3d at 24). Where the expert's "ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment" (*Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *see Frye v Montefiore Med. Ctr.*, 70 AD3d at 24).

Consequently, where the parties' conflicting expert opinions are adequately supported by the record, summary judgment must be denied (*see Frye v Montefiore Med. Ctr.*, 70 AD3d at 24 *Cruz v St. Barnabas Hospital,* 50 AD3d 382 [1st Dept 2008]). The court concludes that the expert affirmations of the plaintiffs' retained urologist and OB/GYN are supported by the medical records and deposition, set forth specific departures from good and accepted practice committed by each of the moving defendants, and articulated a reason as to why those departures caused or contributed to Hoffman's injuries. Hence, although the defendants established their prima facie entitlement to judgment as a matter of law in connection with the cause of action alleging that they departed from accepted practice, the plaintiffs raised triable

issues of fact in opposition, and that branch of the defendants' motion seeking summary judgment dismissing that cause of action must be denied.

Conversely, the defendants established, prima facie, that they fully informed Hoffman of the risks and benefits of a hysterectomy. In opposition, the plaintiffs' experts do not address that issue, and the plaintiffs themselves raise no triable issue of fact as to whether Hoffman's consent to the procedure was fully informed. Hence, summary judgment is awarded to the defendants dismissing the cause of action alleging lack of informed consent.

The court rejects the defendants' contention that it should disregard the affirmations of the plaintiffs' experts because those experts do not share the same specialty as the individual defendants. The courts of this State repeatedly have rejected the concept that only a specialist practicing in a defendant's particular specialty is competent to testify that another specialist departed from accepted practice in the specialty (*see Fuller v Preis*, 35 NY2d 425, 431 [1974]; *Bartolacci-Meir v. Sassoon*, 149 AD3d 567, 572 [1st Dept 2017]; *Bickom v Bierwagen*, 48 AD3d 1247, 1248 [4th Dept 2008]; *Julien v Physician's Hosp.*, 231 AD2d 678, 680 [2d Dept 1996]; *Matter of Enu v Sobol*, 171 AD2d 302, 304 [3d Dept 1991]; *Joswick v Lenox Hill Hosp.*, 161 AD2d 352, 355 [1st Dept 1990]; *cf. Colwin v Katz*, 122 AD3d 523, 524 [1st Dept 2014] [expert failed to assert that he possessed necessary knowledge and training or explain how he came to it, and also failed to set forth the standard of care allegedly violated]).

> "To qualify as an expert, the witness should be possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable. Thus, if a physician possesses the requisite knowledge and expertise to make a determination on the issue presented, he need not be a specialist in the field. The question of whether a physician may testify regarding the standard of accepted medical practice outside the scope of his specialty can be a troublesome one, but appellate courts have rejected claims of error directed at a physician's qualifications to offer an opinion outside the scope of his specialty when the witness's specialty is closely related to the specialty at issue"

(*Matter of Enu v Sobol*, 171 AD2d at 304 [citations omitted]). Thus, in *Fuller v Preis* (35 NY2d at 431), a neurologist was permitted to give an opinion in the closely related specialty of psychiatry

on the issue of whether an accident was the proximate cause of a subsequent suicide. In *Humphrey v Jewish Hosp. & Med. Center* (172 AD2d 494 [2d Dept 1991]), a general surgeon not unqualified to render an opinion in the specialty of obstetrics and gynecology. And in *Matter of Sang Moon Kim v Ambach* (68 AD2d 986, 987 [3d Dept 1979]), the opinion testimony of a qualified neurosurgeon at a professional misconduct hearing was sufficient to permit a finding of gross negligence or gross incompetence of an orthopedic surgeon during spinal surgery.

Here, the plaintiffs' expert urologist asserted that he or she was "fully familiar with the then existing standards of care for all medical, surgical, and urologic care and treatment that pertains to this case." Moreover, the expert stated that he or she had "performed hysterectomies and [was] fully familiar with [the] then existing standard of care for hysterectomies along with diagnosing urologic injuries intra-operatively and post-operatively," including the proper use of "prophylactic ureteral catheters."

The plaintiffs' expert OB/GYN asserted that

> "I am fully familiar with the then existing (and current existing) standards of care for all medical surgical, obstetrical. gynecological and ureteral care and treatment that pertains to this case. All the opinions contained herein are to a reasonable degree of medical certainty and based upon my review of the pertinent records including, but not limited to, The New York Presbyterian Hospital chart, Brooklyn Hospital chart, records of Scott David, M.D., depositions taken in the case, pleadings, and further based upon my decades of practical experience, skills and knowledge developed over decades, as well as my education, teaching, and research. I perform hysterectomies and am fully familiar with the standard of care for hysterectomies along with diagnosing urologic injuries intra-operatively and post-operatively. Additionally, I am routinely involved m the operative and post-operative management of patients with hysterectomies and I am fully familiar with the signs and symptoms of ureteral injuries in this setting. I am fully familiar with the standard of care for diagnosing, evaluating and treating ureteral injuries m this context. I am fully familiar with the standard of care existing at the tune for surgeons operating in close proximity to urologic structures such as the ureters and bladder. I am fully familiar with the standard of care for use of prophylactic ureteral catheters back at that time in this setting. As such, I am well versed in the medicine and standards of care at issue in this lawsuit as to all moving defendants. I have the requisite knowledge to opine as to all defendants based upon based upon my decades of practical experience, skills and knowledge developed over decades, as well as my education, teaching, and research as well as my military medical service overseas in Iraq (2007) and Afghanistan (2004-5; 2011)."

The plaintiffs' experts thus are competent to render an opinion as to the standard of care applicable to the preservation of urinary tract anatomical structures such as the ureter in the course of an obstetrical procedure such as a hysterectomy. They are also competent to testify which of the defendants' acts constituted a departure from that standard, and whether such a departure caused or contributed Hoffman's injuries.

The defendants' remaining contentions are without merit.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment dismissing the complaint is granted to the extent that the cause of action alleging lack of informed consent is dismissed, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

4/30/2021
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:	☐ **CASE DISPOSED**		☒ **NON-FINAL DISPOSITION**		
	☐ **GRANTED**	☐ **DENIED**	☒ **GRANTED IN PART**	☐ **OTHER**	
APPLICATION:	☐ **SETTLE ORDER**		☐ **SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐ **INCLUDES TRANSFER/REASSIGN**		☐ **FIDUCIARY APPOINTMENT**	☐ **REFERENCE**	