

**Roman v Haines**

2021 NY Slip Op 31649(U)

May 13, 2021

Supreme Court, New York County

Docket Number: 805466/2017

Judge: Judith N. McMahon

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JUDITH REEVES MCMAHON **PART** **IAS MOTION 30**

*Justice*

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RAYMOND ROMAN,

Plaintiff,

- v -

CHRISTINE HAINES, BENJAMIN BEDFORD, STEPHEN J  
NICHOLAS MD PC DBA NY ORTHOPEDICS, EAST RIVER  
MEDICAL IMAGING PC, LENOX HILL HOSPITAL

Defendant.

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**INDEX NO.** 805466/2017

**MOTION DATE** 05/05/2021,  
05/05/2021,  
05/05/2021

**MOTION SEQ. NO.** 001 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 157, 158

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 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

were read on this motion to/for DISMISS.

Defendant East River Medical Imaging, P.C. (“East River”) moves this Court for an Order granting it summary judgment pursuant to CPLR §3212 and dismissing the Complaint as against it with prejudice. (“Motion No. 001”). Defendants Benjamin B. Bedford, M.D. (“Dr. Bedford”) and Stephen J. Nicholas, M.D., P.C. d/b/a NY Orthopedics (“NY Orthopedics”) move this Court for an order pursuant to CPLR §3212 granting Dr. Bedford summary judgment dismissal of the Complaint and granting NY Orthopedics partial summary judgment dismissing

the claims against it based upon vicarious liability for the alleged acts or omissions of Dr. Bedford. (“Motion No. 002”). Defendant Lenox Hill Hospital (“Lenox Hill”) also moves for an Order pursuant to CPLR §3212 (1) granting it summary judgment and dismissal of all causes of action as against it, (2) directing the entry of judgment with prejudice in its favor and Defendant Christine Haines, M.D. (“Dr. Haines”) and (3) deleting the name of Lenox Hill and Dr. Haines from the caption. (“Motion No. 003”). It is hereby ordered that Motion No. 001 and Motion No. 003 are granted, while Motion No. 002 is denied as detailed below.

### FACTS

Plaintiff Raymond Roman (“Plaintiff”) commenced this Action for medical malpractice on December 28, 2017. Plaintiff was seen at Pocono Medical Center Emergency Room in Pennsylvania on August 14, 2016 with complaints of throbbing pain in his right lower leg.<sup>1</sup> Plaintiff was instructed to follow up with his primary care physician and given pain medication. After Plaintiff saw his primary care physician Dr. Chaudry on August 15<sup>th</sup>, he was referred to an orthopedic consult with Dr. Mohammed Ahmed at Hunts Point Medical Associates. Plaintiff saw Dr. Ahmed on August 16, 2015 with complaints of severe pain and swelling. Dr. Ahmed instructed him to use a CAM walker and restrict certain activities. On August 17, 2016, Plaintiff sought treatment at Lenox Hill Emergency Department with complaints of persistent and worsening pain and ankle pain/injury. Plaintiff’s x-rays were negative and he had full range of motion at his ankle with the ability to move all his toes. Plaintiff was told to rest, ice and elevate the ankle and follow up with Dr. Bedford, who once treated him for a rotator cuff injury.

On August 18, 2016, Plaintiff presented to Dr. Bedford at NY Orthopedics with an aching, burning and throbbing pain in his right ankle. Upon physically examining the Plaintiff,

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<sup>1</sup> Plaintiff’s tibial pulse and pedal pulse were normal, but he reported a pain of as 10 on a scale of 1 to 10.

Dr. Bedford noted that his right ankle and lower leg were positive for swelling and erythema. Dr. Bedford put in his chart that Plaintiff could not actively flex his digits and had 3/5 dorsiflexion strength. Dr. Bedford's differential diagnosis was right ankle sprain, right deep vein thrombosis ("DVT") and lumbar radiculopathy. Dr. Bedford ordered an MRI of Plaintiff's back and a STAT Doppler ultrasound study to rule out the possibility of DVT. While Dr. Bedford testified that he instructed Plaintiff to go directly to the Lenox Hill Emergency Department, Plaintiff maintains that Dr. Bedford never gave him such a directive.

The record shows that Dr. Bedford created the Doppler order on August 18, 2016 at 12:43 PM and that it was printed out by "Amanda" at 12:50 PM. Ms. Amanda Pabon ("Ms. Pabon") was a receptionist at NY Orthopedics who was responsible for scheduling patients for imaging studies at Lenox Hill, East River and Lenox Hill Radiology. Ms. Pabon called East River at 1:05 PM to schedule Plaintiff's Doppler ultrasound and spoke to Ms. Ria Chionchio ("Ms. Chionchio"), a patient coordinator at East River. According to Ms. Chionchio's testimony, the scheduling sheet shows that Ms. Pabon booked the appointment and accepted the time and date on behalf of the NY Orthopedics office. Ms. Chionchio testified that by custom and practice she would have told the secretary that this usually would be considered an emergency case and that East River would prefer to see the patient the same day. However, she would book the appointment for the date requested if the person calling wanted to come in a different day. Ms. Pabon scheduled the appointment for August 20, 2016 and faxed the prescription to East River at 1:14 PM, which stated priority "stat." Ms. Pabon testified that while she understood that "stat" meant the study had to be done "right away", the scheduling of the patient's Doppler study on August 20, 2016 may be considered a "stat" study. Ms. Pabon also testified that she was able to call another facility if the one she originally contacted was unable to

accommodate her request for a certain study. Ms. Pabon did not do so with respect to the Plaintiff's Doppler order. East River represents that nothing in the record shows that anyone from NY Orthopedics requested an earlier appointment or objected to the date of August 20<sup>th</sup>.

Plaintiff testified that Dr. Bedford's office gave him a referral for the test to be done at East River and told him of the date and time of the appointment. On August 20, 2016, Plaintiff presented to East River and underwent a Doppler ultrasound of his right lower leg, which showed no evidence of a DVT in the right lower extremity. However, East River checked Plaintiff's arteries and diagnosed him with an arterial occlusion. East River immediately sent Plaintiff to the Lenox Hill Emergency Department, where he underwent emergency surgery. After revascularization was unsuccessful, Plaintiff underwent a series of operations that ended with a below knee amputation.

#### East River's Motion

In support of its motion for summary judgment, East River submits the affirmation of Marc Hertz, M.D. ("Dr. Hertz") who is board certified by the American Board of Radiology. With respect to Plaintiff's claims that East River negligently delayed in performing a Doppler study on August 18<sup>th</sup> and August 19<sup>th</sup>, Dr. Hertz opines that East River had no physician-patient relationship with the Plaintiff at the time of the alleged malpractice. Dr. Hertz notes that on August 18<sup>th</sup> and August 19<sup>th</sup>, East River did not see the Plaintiff, treat him, have any contact with him or provide any advice to him. Therefore, Dr. Hertz opines, East River did not have a physician-patient relationship or owe Plaintiff a duty of care prior to August 20, 2016 when Plaintiff presented for his test. Even if East River owed Plaintiff a duty of care on August 18<sup>th</sup> or August 19<sup>th</sup>, Dr. Hertz explains that East River acted within the standard of care and did not proximately cause Plaintiff's injuries.

According to Dr. Hertz, East River's scheduling of the Doppler study for August 20<sup>th</sup> upon the patient or referring physician's request was within good and accepted standards of practice. Dr. Hertz states that East River had no basis to question the scheduling request without a prior relationship or examination of the patient. Dr. Hertz also opines that the communications between East River and Dr. Bedford's office were within the standard of care and notes that no evidence exists that either Ms. Pabon, Plaintiff or anyone from NY Orthopedics requested an appointment earlier than August 20, 2016.

#### Dr. Bedford's and NY Orthopedics' Motion

In support of Motion No. 002, Dr. Bedford submits the affirmation of Paul J. Cagle JR, M.D. ("Dr. Cagle"), who opines that Dr. Bedford's treatment of Plaintiff was within the standard of care and did not proximately cause Plaintiff's alleged injuries. Regarding Plaintiff's allegations that Dr. Bedford caused a delay in treatment, Dr. Cagle states that the record shows Dr. Bedford properly evaluated the Plaintiff, instructed him to seek emergency care and ordered a STAT Doppler ultrasound. Dr. Cagle explains that Dr. Bedford had the right to expect that the Doppler study would be completed on a STAT basis according to his instructions and that Dr. Bedford is not liable for the choices made by Plaintiff or East River, which disregarded his STAT order. Dr. Cagle further opines that any allegation that Dr. Bedford failed to properly order a timely Doppler study did not proximately cause any of Plaintiff's injuries.<sup>2</sup>

#### Lenox Hill's Motion

Lenox Hill submits the affirmation of Andrew Leifer, M.D. ("Dr. Leifer") in support of its motion for summary judgment. Dr. Leifer opines that when Plaintiff presented to Lenox Hill on August 17, 2016, there was no evidence of an arterial occlusion of the distal right superficial

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<sup>2</sup> Dr. Cagle states that there is no evidence that the NY Orthopedics staff were negligently trained and Dr. Bedford bears no responsibility for the training of the staff.

femoral and popliteal arteries or of right lower leg ischemia. Dr. Leifer states that Plaintiff's presentation on August 17<sup>th</sup> was inconsistent with an occlusion or ischemia and instead was consistent with an ankle sprain. Specifically, Plaintiff presented with strong easily palpable peripheral pulses and his right lower extremity was warm, which would typically not be the case if there is an occlusion or significant ischemia. Dr. Leifer also describes how the Lenox Hill staff fully appreciated the Plaintiff's condition and did not ignore his symptoms or past history. Dr. Leifer further explains that Lenox Hill was not required to order a radiology consult or perform a Doppler study based on Plaintiff's presentation. According to Dr. Leifer, it was within the standard of care to treat Plaintiff for an ankle sprain and refer him to his prior treating orthopedist. Dr. Leifer also notes that Dr. Haines did not physically see Plaintiff in the Emergency Department on August 17, 2016. Dr. Leifer further opines that it was within the standard of care to have the physician assistant evaluate Plaintiff and for Dr. Haines to review and sign off on her note.

#### Plaintiff's Opposition to East River's Motion

In opposition to Motion No. 001, Plaintiff argues that East River had an implied physician-patient relationship with him that imposed a duty of care. Specifically, Plaintiff maintains, East River offered him negligent advice that he relied upon and established an implied physician-patient relationship by scheduling the Doppler ultrasound on August 20, 2016. Plaintiff also submits the affirmation of Benjamin D. Seckler, M.D. ("Dr. Seckler"), who opines that it was a departure from the standard of care for the East River patient coordinator to disregard Dr. Bedford's STAT order and schedule the Doppler study in a nonemergency manner. Dr. Seckler states that this departure was a proximate cause of Plaintiff's injuries, including the loss of his right leg. Pointing to Ms. Chionchio's testimony, Dr. Seckler notes that she did not

talk to the radiologist to ensure that the scheduling was sufficient or put Dr. Bedford in contact with the radiologist regarding the scheduling of the procedure. According to Dr. Seckler, Ms. Chionchio's failure to schedule Plaintiff's test STAT was a departure from East River's protocol to schedule Doppler studies STAT or on the same day. Dr. Seckler further states that East River should have notified NY Orthopedics if it was unable to schedule the Doppler study STAT and directed Dr. Bedford's secretary or the Plaintiff to find another facility.

Plaintiff's Opposition to Dr. Bedford's and NY Orthopedics' Motion

In opposition to Motion No. 002, Plaintiff submits the affirmation of Kenneth M. Fine, M.D. ("Dr. Fine"), who opines that Dr. Bedford departed from the accepted standards of care and that such departure proximately caused Plaintiff's injuries. Dr. Fine notes that the NY Orthopedics record makes no mention of Plaintiff's prior care and imaging from August 14<sup>th</sup> to August 17<sup>th</sup>. Citing Dr. Bedford's own testimony, Dr. Fine opines that Dr. Bedford failed to take a proper medical history and examine Plaintiff's foot pulses. Dr. Fine also notes that while Dr. Bedford testified that he told Plaintiff about the possibility of a DVT and instructed him to go to Lenox Hill for the Doppler study, the NY Orthopedics record make no mention of such conversation or directive. According to Dr. Fine, Plaintiff had an acute ischemic event taking place during his visit on August 18<sup>th</sup> and Dr. Bedford's failure to have the Doppler ultrasound performed STAT was a departure from the standard of care that proximately caused Plaintiff's injuries. Dr. Fine further explains that based on Plaintiff's potentially life-threatening condition, Dr. Bedford departed from the standard of care in failing to follow up with the Plaintiff or the Emergency Department to check on Plaintiff's condition and medical care.

## DISCUSSION

Pursuant to CPLR §3212(b), a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing Judgment in favor of any party.” CPLR §3212(b). A party seeking summary judgment must show that there are not material issues of fact that are in dispute and that it is entitled to judgment as a matter of law. *See Dallas-Stephenson v. Waisman*, 39 AD3d 303, 306 [1st Dept., 2007]. Once a movant makes such a showing, “the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial. *Id.*

### Physician-Patient Relationship

To maintain an action for medical malpractice, a doctor-patient relationship is necessary. *See Heller v. Peekskill Community Hosp.*, 198 AD2d 265, 265 [2d Dept 1993] (citing *Lee v. City of New York*, 162 AD2d 34, 35-36 [2d Dept 1990]). “This relationship is created when professional services are rendered and accepted by another person for purposes of medical or surgical treatment and may be based either on an express or implied contract.” *Heller v. Peekskill Community Hosp.*, 198 AD2d 265, 265 [2d Dept 1993]. (*See Razzano v. Goldman*, 178 AD3d 866, 868 [2d Dept 2019] (“A physician-patient relationship exists when professional services are rendered and accepted for purposes of medical treatment.”)). The Second Department has recognized that while a duty of care is owed only to a doctor’s patient, there are certain circumstances that present an implied duty of care to those who are not a doctor’s patients. “For example, a doctor can “owe[ ] a duty of care [not only] to his patient [but also] to [those] persons he knew or reasonably should have known were relying on him for [a particular]

service to his patient” (*Eiseman v. State of New York*, 70 N.Y.2d at 188, 518 N.Y.S.2d 608, 511 N.E.2d 1128).” *Fox v. Marshall*, 88 AD3d 131, 138 [2d Dept 2011].

In the case of *Miller v. Sullivan*, the Appellate Division, Third Department held that no physician-patient relationship existed where a plaintiff phone a doctor and stated that he thought he was having a heart attack because he was sweaty, had back pain and was having trouble breathing. The defendant doctor told him to “come over and see him right away.” The Appellate Division, Third Department held that while a doctor-patient relationship can arise out of a telephone call between a physician and an individual, it is only created when the professional services are rendered and accepted for purposes of medical treatment. The Court noted,

A telephone call affirmatively advising a prospective patient as to a course of treatment can constitute professional service for the purpose of creating a physician-patient relationship only when the advice, if incorrect, would be actionable (*see, Bienz v. Central Suffolk Hosp., supra*). Thus, it must be shown that it was foreseeable that the prospective patient would rely on the advice and that the prospective patient did in fact rely on the advice (*cf., Heller v Peekskill Community Hosp., supra*, at 266). *Miller v. Sullivan*, 214 AD2d 822, 823 [3d Dept 1995]

The Court found that assuming that a physician renders professional service for purposes of medical treatment to a prospective patient by telling the caller to come to his office, the record showed that the decedent did not accept the professional service and instead chose to pursue a different course of conduct. *See id.* In *Garofalo v. State*, a clinic where the plaintiff was referred for a neurological assessment was unable to communicate with her for about a month and scheduled her for a nonemergency appointment. (*See Garofalo v. State*, 17 AD3d 1109, 1110 [4th Dept 2005]). When the Plaintiff appeared for the appointment, the staff indicated she was no in their computer system and told her to reschedule. Before Plaintiff was able to get to her rescheduled appointment, a blood vessel inside her spinal cord hemorrhaged and caused her

injuries. The Court rejected the plaintiff's contention that a physician-patient relationship was created when a resident at the clinic directed that a letter be sent to claimant and scheduling her for a nonemergency appointment. (*See id.*) Specifically, the Court found that the Plaintiff failed to show that professional services of a physician were rendered to and accepted by another person for the purposes of medical treatment. (*See id.*).

#### Standard for Summary Judgment in Medical Malpractice Actions

“A defendant in a medical malpractice action establishes prima facie entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries.” *Anyie B. v. Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015]. (*See Costa v. Columbia Presbyt. Med. Ctr.*, 105 AD3d 525, 525 [1st Dept 2013]). “Once a defendant has established prima facie entitlement to summary judgment, the burden shifts to plaintiff to ‘rebut the prima facie showing via medical evidence attesting that the defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged.’” *Ducasse v. New York City Health and Hosps. Corp.*, 148 AD3d 434, 435 [1st Dept 2017] (internal citations omitted). “The opinion of a qualified expert that a plaintiff's injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants.” *Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 [2002].

“To defeat summary judgment, the expert's opinion “must demonstrate ‘the requisite nexus between the malpractice allegedly committed’ and the harm suffered.” *Anyie B. v. Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015] (internal citations omitted). “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.*, 68 NY2d 320, 325 [1986]. (See *Otero v. Faierman*, 128 AD3d 499, 500 [1st Dept 2015]. See generally *Cruz v. New York City Health and Hosps. Corp.*, 188 AD3d 592, 593 [1st Dept 2020]; *Henry v. Duncan*, 169 AD3d 421 [1st Dept 2019]). “In order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on ‘specifically cited evidence in the record.’” *Lowe v. Japal*, 170 AD3d 701, 703 [2d Dept 2019]. See *Frye v. Montefiore Med. Ctr.*, 70 AD3d 15, 24 [1st Dept 2009].

#### Motion No. 001

The Court finds that East River has shown prima facie that it did not depart from the standard of care or proximately cause Plaintiff's alleged injuries. In his affirmation, Dr. Hertz gives a detailed explanation of how East River did not see the Plaintiff, treat him, provide him with any medical advice or even have contact with him prior to August 20, 2016. Furthermore, Dr. Hertz sufficiently opines that East River was within the standard of care while treating the Plaintiff and during its dealings with Ms. Pabon from NY Orthopedics. Dr. Hertz explains how East River provided no professional services to the Plaintiff prior to August 20<sup>th</sup> and that the scheduling of a radiology study does not create a physician-patient relationship. Based upon the affirmation of Dr. Hertz and the underlying record, Easter River has sufficiently shown its entitlement to judgment as a matter of law.

The Court further finds that Plaintiff has failed to sufficiently rebut East River's prima facie showing and demonstrate that a triable issue of fact exists. Plaintiff has simply failed to show that an implied physician-patient relationship was created, which is necessary to impose a

duty of care upon East River. As previously discussed, a physician-patient relationship exists “when professional services are rendered and accepted for purposes of medical treatment.” *Razzano v. Goldman*, 178 AD3d 866, 868 [2d Dept 2019]. During oral argument, Plaintiff was unable to cite a case in which an implied doctor-patient relationship was found where no doctor either spoke to the patient or gave a directive through his or her staff. The record in this case shows that no doctor at East River rendered professional services to the Plaintiff prior to August 20<sup>th</sup>, either directly or through the patient coordinator. On the contrary, the patient coordinator at East River testified that she made the appointment for Plaintiff’s Doppler study without consulting with a radiologist or other physician at East River. As in the case of *Gargalo, infra*, the Court finds that Plaintiff failed to show that professional services were rendered and accepted by him. The Court also deems Plaintiff’s other allegations against East River to be unmeritorious and insufficient to defeat East River’s prima facie showing. Therefore, Motion No. 001 is granted in its entirety and the Complaint is dismissed as against East River.

#### Motion No. 002

Based upon the affirmation of Dr. Cagle, the Court finds that Dr. Bedford has met his prima facie burden and demonstrated that he did depart from the standard of care or proximately cause Plaintiff’s injuries. Dr. Cagle sufficiently opines that Dr. Bedford properly evaluated the Plaintiff and ordered a STAT Doppler to determine if Plaintiff had a possible DVT. In his affirmation, Dr. Cagle also details how Dr. Bedford had an expectation that his order for a STAT Doppler study would be properly carried out. Therefore, Dr. Bedford has shown prima facie entitlement to judgment as a matter of law.

However, the Court further finds that Plaintiff has sufficiently rebutted Dr. Bedford’s prima facie showing via medical evidence attesting that Dr. Bedford departed from accepted

medical practice and that such departure was a proximate cause of Plaintiff's injuries. In his affirmation, Dr. Fine points to the record and testimony of the Plaintiff that demonstrates an issue of fact exists as to whether Dr. Bedford took a sufficient medical history from Plaintiff and instructed him to go to Lenox Hill for a Doppler study to rule out a DVT. Dr. Fine also sufficiently opines that Plaintiff was undergoing an acute ischemic event during his August 18<sup>th</sup> visit with Dr. Bedford and his failure to have the Doppler ultrasound performed STAT was a departure that proximately caused Plaintiff's injuries. Dr. Fine sufficiently opines that Dr. Bedford departed from the standard of care in failing to follow up with Plaintiff or the Emergency Department at Lenox Hill to see how Plaintiff was doing in light of his possibly life-threatening condition. Dr. Fine's nonconclusory and nonspeculative opinion sufficiently addresses Dr. Cagle's opinion and demonstrates 'the requisite nexus between the malpractice allegedly committed' and the harm suffered." *Anyie B. v. Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015] (internal citations omitted). Therefore, the Court denies Motion No. 002 in its entirety.

#### Motion No. 003

The Court finds that based upon the affirmation of Dr. Leifer, Lenox Hill has shown its prima facie entitlement to judgment as a matter of law. Dr. Leifer sufficiently opines that based upon Plaintiff's presentation on August 17, 2016, Lenox Hill acted within the standard of care by appreciating Plaintiff's history and symptoms. Dr. Leifer explains how it was within the standard of care to treat Plaintiff for an ankle sprain and refer him to his treating orthopedist. Furthermore, Dr. Leifer sufficiently demonstrated that it was within the standard of care to have Plaintiff evaluated by the physician assistant and for Dr. Haines to review and sign off on her note.

As Plaintiff failed to oppose Lenox Hill's Motion for summary judgment, the Court hereby grants Motion No. 003 in its entirety as unopposed.

Accordingly, it is hereby

**ORDERED** that Motion No. 001 is granted in its entirety; it is further

**ORDERED** that the Action is dismissed as against East River; it is further

**ORDERED** that Motion No. 002 is denied in its entirety; it is further

**ORDERED** that Motion No. 003 is granted as unopposed; it is further

**ORDERED** that the Action is dismissed as against Lenox Hill; and it is

**ORDERED** that any and all requests for relief are hereby denied.

5/13/2021

DATE

  
JUDITH REEVES MCMAHON, 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