

Estate of Sharma v Nassau Univ. Med. Ctr.
2021 NY Slip Op 33289(U)
March 31, 2021
Supreme Court, Nassau County
Docket Number: Index No. 612558/2018
Judge: Christopher G. Quinn
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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU CIVIL TERM PART 22**

**Present: HON. CHRISTOPHER G. QUINN
Justice of the Supreme Court**

**THE ESTATE OF SHASHI SHARMA, by NIRMAL
SHARMA, Administratrix of THE ESTATE OF
SHASHI SHARMA, and NIRMAL SHARMA
Individually,**

Plaintiffs,

INDEX NO: 612558/2018

-against-

**MOTION SEQ. No. 2 - MG
MOTION SEQ. No. 3 - MG**

**NASSAU UNIVERSITY MEDICAL CENTER,
NASSAU HEALTH CARE CORPORATION,
SOUTH SHORE CARDIOVASCULAR MEDICINE
P.C., RAMAN KUMAR M.D., MARIA-VICTORIA
AGARIN M.D., JAMAICA MEDICAL SERVICES
P.C. and SWARN GUPTA M.D.,**

Defendants.

The following papers were read on this motion:

- (1) Kumar Notice of Motion/Affirmations/Exhibits A-W**
- (2) Gupta Notice of Motion/Affirmation/Exhibits**
- (3) Plaintiff Affirmation in Opposition/Exhibits 1**
- (4) Kumar Reply**
- (5) Gupta Reply/Exhibits A**
- (6) Proposed Compromise Order/ Affirmation in Support/Affidavits/Exhibits 1-3**

**Defendants RAMAN KUMAR M.D., SWARN GUPTA M.D. and JAMAICA
MEDICAL SERVICES P.C. all seek Orders pursuant to CPLR § 3212 granting them summary**

judgment dismissing all claims against them. Plaintiff opposes. Counsel for plaintiff seeks a Compromise Order.

In this action the estate seeks damages to compensate the family of the deceased, SHASHI SHARMA, for injuries allegedly suffered by him due to the medical malpractice and negligence of the defendants. The decedent committed suicide on July 8, 2017.

It is undisputed that the claims against defendants NASSAU UNIVERSITY MEDICAL CENTER (“NUMC”) and NASSAU HEALTH CARE, were settled. The claims against Dr. AGARIN were apparently discontinued. The plaintiff has requested a Compromise Order be signed by the Court to settle these claims.

The testimony of the parties and SHARMA’s medical records that the decedent was a patient of both defendants GUPTA and KUMAR before his death. Defendant KUMAR was his cardiologist. Defendant GUPTA and JAMAICA MEDICAL SERVICES were the decedents Internal Medicine Physician and medical group.

According to his wife, plaintiff NIRMAL SHARMA, the decedent rarely drank alcohol and was compliant with his medications prior to his suicide. On March 19, 2017 he was taken to a hospital emergency room with stomach pain. The medical records reveal that the staff noted he appeared to be anxious. His wife reported that this was due to the results of a CT scan which he was to discuss with his urologist the next day. The records of St. Joseph’s Hospital reveal that the decedent, SHARMA, requested something to relax and he was given Xanax without any negative effects.

On March 21, 2017 SHARMA was admitted to Good Samaritan Hospital with stomach pains. There was testimony that he began to feel pain while driving home and defendant KUMAR told him to go the Emergency Department. He was admitted for pancreatitis. KUMAR performed a cardiology consultation, notice stable cardiac status, with a normal EKG. During his

admission the decedent was asked if he had thoughts of harming himself or if he felt depressed, and he answered in the negative on both questions.

On April 6, 2017 Dr. GUPTA noted that the decedent had allergy related complaints and reported “having a lot of anxiety”. GUPTA noticed that SHARMA told him he had run his own blood work while working as an Administrator of a lab at Kingsbrook Jewish Medical Center. The results revealed elevated amylase and lipase enzyme levels (Motion, Exh. N). Defendant GUPTA documented that the decedent had been seen by a gastroenterologist who ran a test and did not recommend any further treatment. GUPTA noted that SHARMA remained very anxious despite evidence of improving health.

The next day, April 7, 2017, the decedent met with defendant KUMAR and told him his medical history. KUMAR noted a history of hypertension, hyperlipidemia, hernia and a kidney stone. He noted that a echocardiogram from Good Samaritan showed normal heart function, and the decedent did not complain of chest pain. KUMAR noted that the decedent had high exercise tolerance despite complaints of tiredness and fatigue. He found him stable from a cardiology point of view. He noted that there was a possibility of underlying depression, which was denied by SHARMA. KUMAR testified that he advised SHARMA that if he still did not feel well or felt depressed he should see a psychologist (Motion, Exh. Q). He testified that due to SHARMA’s complaint of anxiety he gave him a prescription for a low dosage of Xanax, to take on an “as needed” basis.

On April 28, 2017 the decedent underwent a colonoscopy. He was seen by Dr. Massimillo. At that time he made no complaint regarding his medications and did not report any feelings of depression or suicidal thoughts (Exh. J,S).

On May 1, 2017 SHARMA was seen by GUPTA, who noted signs of anxiety. The doctor discussed this, along with SHARMA’s finances and potential retirement. GUPTA discussed the prescription of Xanax with SHARMA, who complained that it caused mouth

dryness. GUPTA testified that he informed the patient that he could take Xanax only now and then and should talk to his wife. He noted that the patient seemed calmer when he left the office.

On May 11, 2017 SHARMA saw a pain management specialist, Dr. Thampi at NUMC. He complained of lower back pain and did not complain of depression or medication. He received a trigger point injection to relieve the pain and was prescribed Oxycodone by Dr. Thampi.

SHARMA returned to KUMAR's office on May 16, 2017 with no complaints of pain or shortness of breath or cardiac symptoms. He told the doctor he was walking regularly without problem, but was going to a gastroenterologist for abdominal pain and a pain specialist for thigh and leg pain. KUMAR noted his periodic anxiety and was advised to see a psychiatrist for that. He was also advised to find a neurologist and medical doctor, and was under no cardiac restrictions to activities and exercise. His prescription for Xanax was renewed.

On May 17, 2017 SHARMA underwent a lumbar spine MRI which revealed multi level thoracic and degenerative disc disease, bulges and hernations. On May 22, 2017 he met with Dr. Thampi, who had ordered the MRI. An epidural steroid was recommended. Dr. Thampi noted that SHARMA stated he would consider it, and he told Thampi he was off work until June 30, 2017. SHARMA was referred to physical therapy. There was no discussion of anxiety depression or his medications.

SHARMA went to six session of physical therapy in June 2017. There are no records of any discussions of depression or medications from these sessions.

On May 23, 2017 SHARMA advised defendant GUPTA of left-sided sciatic pain radiating down his leg, seasonal allergies, and sinus issues. He advised GUPTA that he was seeing a physical therapist and a specialist for his leg pain and had undergone an MRI. GUPTA

noted that SHARMA did not appear to be in distress and did not mention Xanax or anxiety or depression.

On June 5, 2017 SHARMA saw Thampi who noted that he was now taking aspirin in addition to medications noted earlier. There was no mention of Xanax, complaints of depression or suicidal thoughts noted (Exh. T).

On June 15, 2017 Dr. Massimillo discontinued SHARMA's use of a proton pump inhibitor due to complaints of dizziness and dry mouth. He noted no complaints or signs of depression (Exh. S).

On June 20, 2017 Plainview Physical Therapy records reveal SHARMA was improving but still experienced back pain while sitting and driving to work. There was no documented observations or complaints of depression or suicide (Exh. U).

On June 26, 2017 SHARMA underwent a lumbar epidural steroid injection performed by Dr. Thampi. There was no documented observations or complaints of depression or suicide (Exh. T).

The plaintiff NIRMAL SHARMA testified that on July 1, 2017 in the evening, decedent SHASHI SHARMA took both oxycodone and Xanax. She testified that she did not know how much he took. She testified that the decedent went into the kitchen, picked up a knife and cut his wrists (Exh I). She testified that she did not observe this, but assumed that this happened after seeing him on July 2, 2017 with blood on his shirt sleeves. She called an ambulance (Exh. I,V).

The decedent was taken to NUMC where his chief complaint was wrist lacerations. He was treated for these injuries and taken to the psychiatric emergency room. There he gave inconsistent medical histories regarding his medications. SHARMA told some providers that he

took one oxycodone and four Xanax, and another he took eight Xanax, and another that he took four Xanax (Exh. V).

The NUMC records noted his suicide attempt, and that he was feeling depressed and tried to kill himself (Exh. V). He was admitted to the hospital. He was seen by Dr. Kate and Dr. AGARIN who both noted his signs of depression, inconsistent histories of medication and claims that he “blacked out” regarding slitting his wrists. They noted that SHARMA could not explain why he did it, even when he recalled slitting his wrists. Dr. AGARIN spoke to the plaintiff NIRMAL SHARMA who stated that she did not notice any suicidal thoughts or depression in the decedent prior to the incident (Exh. V).

The records reveal that a nurse practitioner contacted KUMAR who told him that he was cardiologically well, and that he was prescribed Xanax for anxiety, and advised to seek psychiatric care due to depression (Exh. V).

The NUMC physicians diagnosed the decedent with delirium secondary to BZ and Opiates and adjustment disorder (Exh. V). He was prescribed Cymbalta, and told to continue Lopressor and Losartan and given a cardiac diet. They stated that there was no need for one to one observation, that every 15 minutes observation was directed, and he was advised to discontinue Xanax and continue physical therapy. (Exh. V)

During his stay at NUMC the decedent repeatedly stated that he was not going to kill himself. On July 6, 2017 when his wrist was being tended to, the doctor noted that the decedent was on Cymbalta, and no symptoms of BZ withdrawal and did not appear to be suicidal. (Exh. V)

Dr. AGARIN noted that when she saw the decedent on July 7, 2017 he was “full of life” and not suicidal. He advised him to follow up with plastic surgery and the mental health clinic, and authorized his discharge with the diagnosis of “Delirium secondary to GMC (General Medical Condition) MDD (Major Depressive Disorder)” (Exh. V)

NIRMAL SHARMA testified that on July 8, 2017, she ate breakfast with the decedent and he took his Lopressor. She set out to go to her temple, leaving him at home with her

daughter. She testified that ten minutes later her neighbor called to tell her there was a fire in her yard. She returned home to find her husband had lit himself on fire in their shed (Exh. I). The medical examiner noted no trace of Xanax in his system (Motion, Exh. W).

At her deposition the plaintiff testified that he did not know if her husband had ever suffered from depression, and never had a prior suicide attempt (Motion, Exh. I).

Dr. KUMAR seeks summary judgment claiming that there is no evidence that he committed malpractice or negligence or caused the decedent's injuries. KUMAR concedes that he prescribed Xanax to the decedent on April 7, 2017 due to his suffering from anxiety. The movant argues that there is no evidence of any causation between that prescription and the decedent's suicide.

In support of his motion he provides expert affirmations from a cardiologist and psychiatrist who state that the defendant's care and treatment of the decedent on April 7, 2017 was consistent with the applicable standard of care. They also state that the monitoring of the patient after that prescription was given was also consistent with applicable standards of care. These doctors state that there is nothing in the medical records of evidence shared in this matter that any act or omission by Dr. KUMAR caused or contributed to any injury allegedly sustained by the decedent, Mr. SHARMA, including his death. They note that the evidence indicates that he had not taken Xanax in the days leading up to his death and there was no trace of Xanax in his system, establishing it was not a factor in his suicide.

Defendant GUPTA has offered an expert medical affirmation in support of his motion for summary judgement. The expert, a Specialist in Internal Medicine, opines that after review of all relevant medical evidence relating to these claims, there is no evidence that the defendant departed from the acceptable standards of care in his treatment of the decedent, and there is no evidence that GUPTA's care of the decedent caused the decedent's injuries and death.

In support of their motions for summary judgment, the defendants provide affidavits from medical experts stating that they had followed good and accepted medical practice with regard to

their treatment of the decedent, and thereby fulfilled the duties created by their respective relationships to decedent. These are sufficient to shift the burden onto plaintiff to establish the existence of a material issue of fact by an offer of evidentiary proof [*Zuckerman v. City of New York*, 49 N.Y.2d 557 (N.Y. 1980); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (N.Y. 1986)].

Plaintiff opposes both applications and provides medical affirmations to oppose summary judgment.

In opposing this motion, plaintiff must demonstrate by admissible evidence the existence of a factual issue requiring trial. In a medical malpractice action, a plaintiff must submit an affidavit of a medical expert setting forth that expert's opinion that the defendant did not, in fact, follow good and accepted medical practice. The plaintiff must demonstrate not only a deviation or departure from accepted practice by defendants, but also evidence that such departure was a proximate cause of the injury [*Ansler v. Verrilli*, 119 A.D.2d 786 (2nd Dept. 1986)]. An affidavit of a medical expert stating an opinion that defendant physician was negligent and that negligence harmed plaintiff, when accompanied by the specific factors used as the basis of that opinion, is sufficient to raise a triable issue of fact [*Menzel v. Plotnick*, 202 A.D.2d 558 (2nd Dept. 1994)]. Absent any indicia of proof of medical malpractice in the opposing papers submitted by plaintiff a defendant/physician's motion should be granted [*Fileccia v. Massapequa Gen. Hosp.*, 63 N.Y.2d 639 affd 99 A.D.2d 796 (N.Y. 1984)].

The medical affidavits offered by plaintiff do not state that any failures of KUMAR or GUPTA with respect to plaintiff's diagnosis and treatment actually shortened his life expectancy or caused his death. The experts are not specific with respect to causation.

The plaintiff's medical expert regarding KUMAR's treatment of plaintiff is a general physician, not an expert in the field of KUMAR's practice, cardiology. This causes the Court to scrutinize his opinion more carefully [*Corsetti v. Koppers Co. Inc.*, 226 A.D.2d 205 (1st Dept. 1996)]. The Court finds it insufficient. The Court does not find that his listed qualifications are sufficient as to offer an expert opinion on cardiac care [*Behar v. Coren*, 21 AD3d 1045 (2nd dept 2005)]. The expert does not state that the prescription of Xanax, or any of his cardiac care

caused SHARMA's death by suicide [*Falotico v. Frankel*, 232 A.D.2d 607 (2nd Dept. 1996)]. There is no statement from the expert that a cardiologist had more of an obligation regarding a potential mental health diagnosis. He does not state what, if anything the cardiologist was to do on April 7, 2017, which was not done which would have prevented SHARMA's suicide or prolonged his life.

There is no statement by a qualified expert as to that the departure from standard cardiologist care was which ultimately led to the decedent's death [*Tucker v. Elinelech*, 184 A.D.2d 636 (2nd Dept. 1992); *Lee v. Shields*, 188 A.D.2d 637 (2nd Dept. 1992)]. The opinion of the purported experts are little more than conclusory and speculative misstatement of fact. There is no indication that KUMAR undertook to treat SHARMA for depression or assumed a duty to do so.

Similar analysis is used to discuss the plaintiff's opposition to GUPTA's motion for summary judgment. Dr. GUPTA was Mr. SHARMA's Internal Medicine Specialist. The plaintiff's expert does not indicate that he reviewed GUPTA's files in forming his opinion that GUPTA departed from good and accepted standards of care in the medical community in the treatment of the deceased, and that the injuries claimed by the plaintiff were not caused by any malpractice on the part of Dr. GUPTA.

Although the plaintiff argues that SHARMA visited GUPTA on February 7, 2017 with complaints and signs of depression, there is no record of this visit by any person with firsthand knowledge of the facts. There is no record of any related mental health complaints in GUPTA's records, and at his deposition, he testified that there were no observations of depression or suicidal tendencies or related complaints made. The treatment from GUPTA related to allergies and treatment for sore throats (Exh. J).

In addition, the evidence in this case reveals that KUMAR's records were from April 7, 2017 incorrectly noted that the decedent's primary care physician was a Dr. Sandeep Gupta, not

defendant Dr. SWARN GUPTA. There is no evidence that KUMAR notified defendant GUPTA of his referral for a psychiatric evaluation at any time.


The plaintiffs opposition to both motions fails to address the necessary element of causation [*Perrone v. Grover*, 272 AD2d 312 (2nd Dept 2000)]. Plaintiffs have failed to offer any evidence to establish any causation between the treatment of either KARMA or GUPTA which led to the decedent's suicide, months later, in July 2017. The opinions provided only offer speculation [*Grzelecki v. Sipperly*, 2 AD3d 939 (3rd Dept 2003); *Bickford v. St. Francis Hosp.*, 19 AD3d 344 (2nd Dept 2006)]. There is no evidence that any treatment or omission by these defendants could result in the decedent's suicide as a foreseeable consequence [*Watkins v. Labiak*, 282 AD2d 601 (2001), *lv. dismissed* 96 NY2d 897 (2001)].

Based on the proof presented, the Court cannot find that plaintiff's experts have established what actions or omissions by KUMAR and GUPTA caused his death.

Good cause having been demonstrated, the motions of these defendants seeking summary judgment are granted and the plaintiff's First, Second Third and Fourth Causes of Action in the Amended Verified Complaint against these defendants, KUMAR, SOUTH SHORE CARDIOVASCULAR MEDICINE P.C., GUPTA and JAMAICA MEDICAL SERVICES, P.C., are dismissed.

There being no opposition and good cause having been demonstrated, as to plaintiff's request for a Compromise Order, that request is Granted.

It is **SO ORDERED**.



HON. CHRISTOPHER G. QUINN, J.S.C.

Dated: March 31, 2021

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NASSAU COUNTY
COUNTY CLERK'S OFFICE