Bretschger v Bernstein
2022 NY Slip Op 33227(U)
September 22, 2022
Supreme Court, New York County
Docket Number: Index No. 805405/2018
Judge: Judith N. McMahon

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JUDITH MCMAHON** **PART** **30M**

Justice

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WILLIAM BRETSCHGER,

Plaintiff,

- v -

STEVEN BERNSTEIN, PYRAMID MEDICAL ASSOCIATES, P.C.

Defendant.

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INDEX NO. 805405/2018

MOTION DATE 09/21/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

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

Upon the foregoing documents, it is ordered that the motion of defendants, Steven Bernstein, M.D. and Pyramid Medical Associates, P.C., for summary judgment dismissing the complaint of the plaintiff, William Bretschger, is granted to the extent that (1) all direct claims of negligence as against Pyramid Medical Associates, P.C., are hereby severed and dismissed, and Pyramid Medical Associates, P.C. can only be found to be vicariously negligent due to the malpractice, if any, committed by Dr. Bernstein, and (2) all claims related to plaintiff's treatment prior to 2010, as well as claims related to fatigue, weight gain, loss of nervous system function (*i.e.*, right hand tremor, loss of sensation in fingers, shooting pain in lower extremities), loss of bladder function, loss of patience, problems sleeping, compromised cognitive function and erectile dysfunction (*see* Supplemental Verified Bill of Particulars, NYSCEF Doc. No. 45) are severed and dismissed. The balance of the motion is denied.

This medical malpractice action arises out of defendants' alleged failure to diagnose and treat plaintiff's left sided substernal thyroid goiter, from 2010 until it was surgically removed on

defendants departed from generally accepted standards of medical care by not ordering appropriate diagnostic tests and referring plaintiff to a specialist (*i.e.*, pulmonologist) in response to his ongoing complaints of respiratory discomfort, and that these departures were a proximate cause of plaintiff's injuries.[1]

BACKGROUND

Dr. Steven Bernstein was plaintiff's internist from approximately 1999 through August 26, 2016. The now 72-year-old plaintiff is five feet nine inches tall, and his weight has fluctuated over the years between 200 and 285 pounds. Plaintiff is diabetic, suffers from obstructive sleep apnea and has smoked ten or fewer cigarettes a day for many years.

In September of 2010 plaintiff began to complain of shortness of breath, coughing and wheezing (*see* Dr. Bernstein's records; NYSCEF Doc. No. 61, pp 88 and continuing). Repeated presentations to Dr. Bernstein for respiratory symptoms continued over the remainder of 2011, and from 2012 through August of 2016. In fact, plaintiff saw Dr. Bernstein a total of six times in 2010, ten times in 2011, eight times in 2012, six times in 2013, eight times in 2014, four times in 2015 and three times in 2016 for "shortness of breath, cough, wheezing, sore throat and hoarseness."

Diagnostically, on May 14, 2014, Dr. Bernstein performed a chest x-ray in his office, which he interpreted as normal. On May 14, 2014, June 11, 2014, February 2, 2016, and

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[1] According to his bills of particulars, plaintiff's injuries include "physical pain and suffering, mental and emotional distress, fatigue, blackouts, weight gain, progression and enlargement of one or more goiters and/or multinodular goiter, the goiter wrapping around his windpipe, deformation of windpipe, goiter dropping into his chest, formation of a substernal component of the one or more goiters, displaced lung, displaced heart, damage to and/or compression of windpipe, deterioration of respiratory condition/capacity, shortness of breath, respiratory complications, difficulty breathing while walking and talking, increased difficulty in treating the goiter, need for surgery and a more complicated removal of goiter, erectile dysfunction, loss of bladder control, loss of nervous system function, loss of balance, loss of writing ability, sleeping problems, compromised cognitive function, loss of patience, need for thyroid hormone replacement medication, loss of ability to engage in physical exercise and/or athletic activities, loss of lifestyle and quality and enjoyment of life" (*see* September 8, 2021 Supplemental Verified Bill of Particulars; NSCEF Doc. No. 46, para 18).

February 22, 2016, Dr. Bernstein performed spirometry testing on plaintiff that demonstrated reduced volumes but no other abnormalities (*id.*, p. 215). Plaintiff's thyroid function was repeatedly examined through blood tests between 2001 and 2016 and was always noted to be normal.[2]

At his March 11, 2021 deposition, plaintiff stated that in 2014 and 2015 his respiratory condition was so bad that he feared that any time he caught a cold, he would not be able to breathe enough to survive (*see* NYSCEF Doc. No. 71, p. 53). He also stated that toward the end of his visits with Dr. Bernstein, he was unable to turn his neck without blacking out. Plaintiff concedes that Dr. Bernstein examined his neck on various visits throughout his course of treatment.

On January 10, 2017, plaintiff presented to a new doctor, non-party internist, Dr. David Radin. Dr. Radin's initial examination noted some bilateral rhonchi throughout the lungs, and he recorded that plaintiff suffered from shortness of breath, diabetes, hyperlipidemia, obesity, and asbestos exposure. The doctor ordered laboratory tests as well as another chest x-ray which was performed that day at Advanced Radiology Consultants. The x-ray revealed an abnormality by way of a widened mediastinum and questionable opacity overlying the heart (*see* NYSCEF Doc. No. 75, p. 52).

On January 13, 2017, the plaintiff underwent a CT scan of his chest which identified a large left-sided substernal thyroid goiter measuring up to 6.0 cm by 5.8 cm. The trachea was severely narrowed with a cross-sectional diameter as small as 0.83 sq. cm. and was displaced to

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[2] In addition to lab testing of thyroid function, Dr. Bernestein testified that he examined plaintiff's thyroid, neck, salivary glands and lymph nodes on each office visit. He would "stand behind plaintiff, feel the lateral aspects of both sides of the neck, feel the supraclavicular notch, have the plaintiff drink water and feel as the thyroid would come up under his fingers and press on the neck" (*see* NYSCEF Doc. No. 73, p. 58, ll 14-19).

the right (*id.*, p. 37). Dr. Radin referred plaintiff to an endocrine surgeon, Tobias Carling, M.D., for further evaluation.

On March 13, 2017, plaintiff underwent a total thyroidectomy performed by Dr. Carling. One week later, plaintiff reported to Dr. Radin that his breathing had significantly improved. Plaintiff testified that since his thyroid surgery the mobility of his neck has improved, and he could drive again without blacking out (*see* NYSCEF Doc. No. 75, p. 143, ll 6-9).

Plaintiff followed-up with the Dr. Carling on March 23, 2017, at which time the surgeon performed a laryngoscopy and noted that the nasopharynx and oropharynx were unremarkable, the supraglottic larynx and hypopharynx were normal, the bilateral vocal cords were mobile, and the airway was completely patent.

Plaintiff was released from the surgeon's care but continues to treat with Dr. Radin regularly.

SUMMARY JUDGMENT AND EXPERTS' OPINIONS

Defendants move for summary judgment on the grounds that the appropriate standard of medical care was in all respects met, and that treatment of plaintiff was not a proximate cause of his claimed injuries. In support the defendants submit, *inter alia,* the affirmations of two experts: (1) Allan Gibofsky, M.D., an expert in internal medicine and rheumatology (*see* NYSCEF Doc. No. 52), and (2) Jason G. Newman, M.D., an expert in otolaryngology (*see* NYSCEF Doc. No. 53).

For his part, Dr. Gibofsky opines unequivocally that the care rendered by defendants was well within the applicable standards of good and accepted medical practice, and that it is "beyond legitimate medical dispute" that during his care and treatment of plaintiff, Dr. Bernstein (1) had no reason to suspect and/or diagnose a goiter; (2) appropriately attributed plaintiff's

complaints to his history of smoking, diabetes, hypertension, obesity and sleep apnea; (3) appropriately performed physical examinations of plaintiff during each office visit including but not limited to examinations of his thyroid, neck chest and lungs; (4) had no reason to order additional imaging, lab tests, or to refer plaintiff to other specialists; (5) had no indication to prescribe additional medications, and (6) had no indication to conduct any additional work ups to rule out lung cancer (*see* NYSCEF Doc. No. 52, para 5).

Dr. Gibofsky explains there are two types of thyroid problems: "[t]he first is a functional thyroid problem, which involves issues with thyroid hormones being too high or low. The second…is that of a goiter, which is when the thyroid itself becomes abnormally enlarged" (*id.*, para 55). "While a goiter can affect a thyroid's function, it is possible to have a normally functioning thyroid even in the presence of a goiter and further, once a goiter is diagnosed, one does not automatically proceed to surgical removal. Some patients can live with a goiter their entire lives, especially for a patient [like plaintiff] whose thyroid was still functioning normally as reflected in his lab results" (*id.*).

According to Dr. Gibofsky, most of the signs and symptoms that plaintiff claims should have alerted the doctor to the presence of a goiter (*i.e.*, dizziness, irregular pulse rate, diarrhea, constipation, nausea) may point to thyroid function, but are irrelevant here because plaintiff's thyroid function always tested normal. The other alleged signs and symptoms of goiter (*i.e.*, difficulty breathing, shortness of breath, coughing, wheezing, increase in neck size, difficulty swallowing, hoarseness, throat tightness and shaky voice) are not specific to the diagnosis of a goiter, and may be attributed to plaintiff's many medical conditions including obesity, cigarette smoking, sleep apnea, diabetes and hypertension all of which can contribute to his complaints, leaving defendant with "sufficient information to attribute plaintiff's complaint to his history and

underlying co-morbidities alone." The doctor opines that there was no reason to suspect the presence of a goiter or any reason to prompt additional testing or referrals, especially with the "thorough, complete and appropriate physical exams' Dr. Bernstein conducted during each visit which included examination of thyroid, neck, throat, chest and lungs and the spirometry tests. The expert further opines that additional testing to rule out lung cancer, which may have revealed an incidental finding of goiter, is speculative and not supported by the facts (*i.e.,* normal physical examination of plaintiff's lungs and chest on each visit, normal chest x-ray in May of 2014), and that even plaintiff's subsequent treating internist did not suspect a goiter, (as evidenced by his ordering a chest x-ray to ascertain *active* disease) which "only supports the argument that Dr. Bernstein should not have suspected a goiter" (*id.*, para 64).

Dr. Newman opines, to a reasonable degree of medical certainty based upon his education, training, and experience as a head and neck surgeon, that (1) no action or inaction on behalf of the defendants proximately caused plaintiff's injuries; (2) diagnosis of the goiter did not result in the need for plaintiff to undergo surgery, nor did it result in a more complex surgery or change his surgical options, and (3) there is no evidence that the majority of plaintiff's alleged complaints were in any way caused by the timing of the diagnosis of the goiter, but are more likely a result of his underlying co-morbidities.

Specifically, Dr. Newman sets forth that the fact that the goiter was diagnosed in January of 2017 had no bearing on alleged "increased difficulty in treating the goiter, the need for surgery to remove the goiter, and a more complicated removal of the goiter". He explains that in a case where a nodular goiter develops, as here, one does not automatically proceed to surgical removal. Finally, the fact that the goiter was not diagnosed until January of 2017 did not change plaintiff's surgical options, because this plaintiff would have required the same surgery (total

thyroidectomy even if the goiter had been diagnosed sooner). Here, the surgeon was able to remove the goiter through an incision in the neck. Dr. Newman concludes that "nothing Dr. Bernstein did or did not do caused this patient to need surgery or impacted his surgical options." Plaintiff's trachea returned to its original diameter once the goiter was removed, and there is no evidence that his continued respiratory complaints are caused by anything other than underlying co-morbidities including continued smoking, obesity, diabetes, and sleep apnea.

In opposition, plaintiff argues that genuine issues of material fact exist which preclude summary judgment, as evidenced by the expert affirmations of (1) Perry Starer, M.D., an internist with a sub-certification in geriatric medicine (*see* NYSCEF Doc. No. 68), and (2) Andrew Cheng, M.D., whose specialty is otolaryngology (*see* NYSCEF Doc. No. 69).

Dr. Starer opines within a reasonable degree of medical certainty that defendant departed from accepted standards of medical care in (1) failing to perform an appropriate diagnostic workup of plaintiff in response to his worsening respiratory signs and symptoms and repeated presentations[3]; (2) failing to refer plaintiff to appropriate specialists; (3) failing to rule out lung cancer as the cause of plaintiff's signs and symptoms, and (4) failing to diagnose plaintiff with a substernal goiter. It is his further opinion that, as a result of these departures, plaintiff was "forced to suffer with his persistent respiratory symptoms for many years, at least from 2010 through…March of 2017, and also suffered severe mental and emotional distress in connection with his condition, including fear of getting a cold and fear of dying from a cold" (*see* NYSCEF Doc No. 68, para 45).

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[3] In this regard, Dr. Starer notes that in September of 2010 plaintiff developed new and concerning respiratory symptoms, and that it was "presumptuous and unreasonable, and a departure from standards of medical care, for Dr. Bernstein to have concluded that the plaintiff's new and persistent respiratory signs and symptoms were attributable to his various comorbidities," since many of the comorbidities predated September of 2010 (*id.*, para 47).

In Dr. Starer's opinion, defendant departed from the standard of care by failing to send the plaintiff for further diagnostic testing relative to his respiratory symptoms (particularly a chest CT scan) and failing to refer plaintiff to a pulmonologist after the chest x-ray and spirometry tests proved unrevealing with regard to the etiology of the plaintiff's respiratory symptoms (*i.e.*, "Dr. Bernstein had ample reason to suspect an etiology of the plaintiff's persisting, worsened respiratory symptoms, from at least September of 2010 onward, separate and apart from plaintiff's preexisting comorbidities and/or any infection. Whether that etiology may have been a goiter, lung cancer, or something else, medical standards of care required that Dr. Bernstein order an appropriate diagnostic workup to determine whether there was such an etiology, and what it was…this failure was a departure of the standards of medical care").

Dr. Starer is unequivocal in his opinion that normal thyroid function was not enough of a reason to delay further diagnostic testing, that referrals for a CT scan and to a pulmonologist would have resulted in diagnosis of the goiter in 2010 or early 2011, and that "had Dr. Bernstein ordered an appropriate diagnostic workup of the plaintiff in 2010, including a chest CT scan and a referral to pulmonology, the plaintiff's goiter would have been diagnosed years earlier than it was, and he would have had the opportunity to receive treatment for it many years earlier, and thus would not have had to suffer with his persistent respiratory symptoms for so many years".

Dr. Cheng sets forth his opinion within a reasonable degree of medical certainty that plaintiff suffered from persistent respiratory symptoms for many years because of the delay in diagnosing the goiter, and that by electing to undergo a total thyroidectomy in March of 2017 plaintiff was deprived of other treatment modalities. Specifically, Dr. Cheng offers his opinion as to causation of the injury, stating that "as a result of the delay in diagnosis of the plaintiff's goiter from 2010 through 2017, the plaintiff suffered with his persistent symptoms for many

years, at least from 2010 through thyroid surgery in March of 2017, elected to undergo a total thyroidectomy, was deprived of the option of other treatment modalities for his goiter, and suffered persistent damage to his trachea and a resulting persistently compromised respiratory condition".

Dr. Cheng explains that plaintiff's goiter in this case was "of a very substantial size". It is his opinion "within a reasonable degree of medical certainty, had the goiter been diagnosed earlier on in time, such as in 2010 or 2011, when Dr. Starer opines it should have been diagnosed, the plaintiff would have had the option of other treatment modalities relative to his goiter such as supplemental thyroid medications and radioactive iodine therapy. These treatment options, when medically indicated and available, have a high success rate in significantly reducing the size of the goiter, preventing it from growing further, and relieving the patient's respiratory symptoms as a result…[i]f it had been diagnosed prior to 2014, plaintiff "likely would have had the option of a subtotal thyroidectomy" (*see* NYSCEF Doc. No. 69, para 51). Dr. Cheng concludes that plaintiff has suffered persistent damage to his trachea and a persistently compromised respiratory condition as a result of the delay in the diagnosis of his goiter from 2010 to 2017.

APPLICABLE LAW

The standards for summary judgment are well settled. The proponent "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]; [*internal citations omitted*]). The motion must be supported by evidence in admissible form (*see Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]), and the facts must be viewed in the light most favorable to the nonmoving party (*see Vega v. Restani Constr.*

Corp., 18 NY3d 499, 503 [2012]). "In 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 the issues of credibility" (*Garcia v. J.D. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept. 1992]).

Once the movant has met his or her burden on the motion, the nonmoving party must establish the existence of a material issue of fact (*see Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). A movant's failure to make a *prima facie* showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; [*internal citations omitted*]). It has been held that merely "pointing to gaps in an opponent's evidence is insufficient to demonstrate a movant's entitlement to summary judgment" (*Koulermos v. A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept. 2016]).

"The drastic remedy of summary judgment, which deprives a party of his 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'" (*DeParis v. Women's Natl. Republican Club, Inc.*, 148 AD3d 401 [1st Dept. 2017]; [*internal citations omitted*]).

To sustain a cause of action for medical malpractice, the 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 the claimed injury. A medical provider moving for summary judgment, therefore, 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 (*Frye v. Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept. 2009]; [*internal citations omitted*]), or by establishing that the plaintiff was not injured by such treatment (*see* generally *Stukas v. Streiter*, 83 AD3d 18 [2d Dept. 2011]).

To satisfy the burden on the motion, 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 AD3d204, 206 [1st Dept. 2010]). If the expert's opinion is not based on facts in the record, the facts must be personally known to the expert and the opinion should specify "in what way" the plaintiff's treatment was proper and "elucidate the standard of care" (*Ocasio-Gary v. Lawrence Hospital*, 69 AD3d 403, 404 [1st Dept. 2010]). Once a defendant has made such a showing, the burden shifts to the plaintiff to "submit evidentiary facts or materials to rebut the *prima facie* showing by the defendant" (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]), but only as to those elements on which the defendant met the burden (*see Gillespie v. New York Hosp. Queens,* 96 AD3d 901 [2d Dept. 2012]). Accordingly, a plaintiff must produce expert testimony regarding the specific acts of malpractice, and not just testimony that alleges "[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence" (*Alvarez v. Prospect Hosp.*, 68 NY2d at 325). 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 defeat summary judgment (*Frye v. Montefiore Med. Ctr.*, 70 AD3d 15, 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]). The plaintiff's expert must address the specific assertions of the defendant's expert with respect to negligence and causation (*see Foster-Sturrup v. Long*, 95 AD3d 726, 728-729 [1st Dept. 2012]).

Where the parties' conflicting expert opinions are adequately supported by the record, summary judgment must be denied. "Resolution of issues of credibility of expert witnesses and

the accuracy of their testimony are matters within the province of the jury" (*Frye v. Montefiore Med. Ctr.*, 70 AD3d 15, 25; *see also Cruz v. St. Barnabas Hospital*, 50 AD3d 382 [1st Dept. 2008]).

ANALYSIS

Through the affirmations of their experts, defendants have established entitlement to summary judgment dismissing of all of plaintiff's claims related (1) treatment rendered by defendant primary care provider, Pyramid Medical Associates, Inc., and (2) treatment rendered prior to 2010, fatigue, weight gain, need for thyroid medication, loss of nervous system function (i.e., right hand tremor, loss of sensation in fingers, shooting pain in lower extremities), loss of bladder function, problems sleeping, loss of patience, compromised cognitive function and erectile dysfunction. Plaintiffs did not address or specifically oppose these branches of defendants' motion and accordingly, defendant Dr. Bernstein is awarded summary judgment severing and dismissing the foregoing claims by plaintiffs.

Defendants have also established entitlement to judgment as a matter of law dismissing the medical malpractice cause of action, by submitting the factually based and detailed affirmations of their experts, who opined that the defendant made all appropriate and timely decisions during treatment of plaintiff's respiratory symptoms between 2010 and August 16, 2017.

In opposition, plaintiff has met his burden in rebutting defendants' *prima facie* showing by submitting, *inter alia*, the affirmations of his experts, each of whom specifically address the assertions made by defendants' experts. Relevant here, *inter alia*, is (1) Dr. Starer's unequivocal opinion that the standard of care dictated a diagnostic workup of plaintiff's respiratory system and a referral to a pulmonologist to determine whether there was an underlying cause of the plaintiff's new respiratory symptoms, particularly given plaintiff's high-risk status due to his multiple risk factors and comorbidities; (2) further diagnostic testing to determine the etiology of plaintiff's

new respiratory symptoms, particularly given plaintiff's high-risk status due to his multiple risk factors and comorbidities; (2) further diagnostic testing to determine the etiology of plaintiff's symptoms after the 2014 chest x-ray and 2014 and 2016 spirometry tests were unrevealing, with regard to the etiology of plaintiff's respiratory symptoms, and (3) Dr. Cheng's opinion that plaintiff's goiter was present for "many, many years, going back to at least 2010, and was the cause of his respiratory signs and symptoms" as evidenced by the size of the goiter and plaintiff's rapid recovery from his respiratory symptoms. Accordingly, plaintiff has successfully raised triable issues of fact sufficient to defeat summary judgment.

While evidence of injury alone does not mean that the defendants were negligent (*see Landau v. Rappaport*, 306 AD2d 446 [1st Dept. 2003]), the facts in this record together with plaintiff's experts' opinions as to the departures from good and accepted medical practice mandates a trial on whether the defendants' failure to perform further diagnostic testing and refer plaintiff to a pulmonologist in response to seven years of repeated respiratory complaints was a proximate cause of plaintiff's injuries.

Accordingly, it is

ORDERED that the motion for summary judgment of defendant Pyramid Medical Associates, P.C. is granted to the extent that plaintiff's direct claims of negligence, if any, against this defendant are severed and dismissed; and it is further

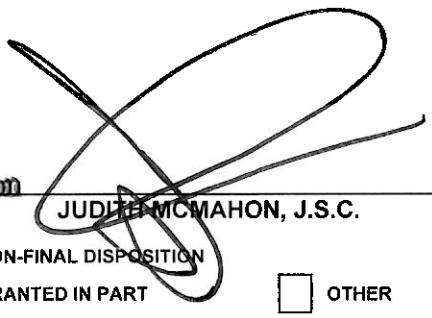
ORDERED that Pyramid Medical Associates, P.C. can only be found vicariously negligent of defendant, Dr. Bernstein, if Dr. Bernstein is found to have committed malpractice; and it is further

ORDERED that defendant Steven Bernstein M.D.'s motion for summary judgment is granted to the extent of severing and dismissing all of plaintiff's claims related to treatment

rendered prior to 2010, together with plaintiff's claims of fatigue, weight gain, the need for thyroid medication, loss of nervous system function, loss of bladder function, problems sleeping, loss of patience, compromised cognitive function and erectile dysfunction; and it is further

ORDERED that the balance of the motion by defendant Dr. Steven Bernstein is denied; and it is further

ORDERED that the parties appear for a pre-trial conference by Microsoft Teams on November 28, 2022 at 11:45 a.m.



9/22/2022
DATE

Hon. Judith N. McMahon
J.S.C.

JUDITH MCMAHON, J.S.C.

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