

Sultana v St. Elizabeth Med. Ctr.

2022 NY Slip Op 33587(U)

October 18, 2022

Supreme Court, New York County

Docket Number: Index No. 805233/2019

Judge: Erika M. Edwards

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

PRESENT: HON. ERIKA M. EDWARDS PART 10M

Justice

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FARZANA SULTANA as Administrator of the Estate of
FARDUSH SULTANA, deceased, FARZANA SULTANA,
Individually, ABUL BASHAR and PARVEEN AKHTER,

Plaintiffs,

- v -

ST. ELIZABETH MEDICAL CENTER, MOHAWK VALLEY
HEALTH SYSTEM, MVHS MEDICAL GROUP,
EMERGENCY PHYSICIAN SERVICES OF NEW YORK,
P.C., NEURO-INTERVENTIONAL SURGERY AND
COMPREHENSIVE STROKE GROUP, NEURO SCIENCES
GROUP, ARUL KANNAN, NICOLAS QANDAH,
ALEXANDER CARANGELO, DANA FINCH, FAROOK
KIDWAI, KEVIN GEHR, RAMESH CHERUKURI and
SUSHMA KAUL,

Defendants.

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INDEX NO. 805233/2019

MOTION DATE 03/24/2022,
03/24/2022,
03/24/2022,
03/24/2022,
06/02/2022

MOTION SEQ. NO. 004, 005, 006,
007, 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 302, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 385, 387, 395, 396, 397, 398, 399, 409, 412

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 305, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 388, 392, 404, 405, 406, 410, 413

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 304, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 386, 389, 407, 414, 417

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 303, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 384, 390, 393, 408, 415, 418, 420

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 391, 394, 400, 401, 402, 403, 411, 416

were read on this motion to/for

SUMMARY JUDGMENT

Upon the foregoing documents and oral argument held before this court on August 30, 2022, the court grants motion sequence numbers 004, 005, 007 and 008, and denies motion sequence 006.

Plaintiff Farzana Sultana as Administrator of the Estate of Fardush Sultana, Deceased (“Deceased Plaintiff”), Farzana Sultana, Individually, Abdul Bashar, and Parveen Akhter (collectively, “Plaintiffs”) brought this action sounding in medical malpractice, negligence, wrongful death, lack of informed consent and derivative claims against the remaining Defendants St. Elizabeth Medical Center (“St. Elizabeth”), Mohawk Valley Health System (“MVHS”), MVHS Medical Group (“MVHS Group”), Emergency Physician Services of New York, P.C. (“Emergency Physician Services”), Neuro-Interventional Surgery and Comprehensive Stroke Group (“Neuro-Interventional”), Neuro Sciences Group (“Neuro Sciences”), Arul Kannan (“Kannan”), Nicolas Qandah (“Qandah”), Alexander Carangelo (“Carangelo”), Dana Finch (“Finch”), Farook Kidwai (“Kidwai”), Kevin Gehr (“Gehr”), Ramesh Cherukuri (“Cherukuri”) and Sushma Kaul (“Kaul”) (collectively, “Defendants”).

Plaintiffs allege in substance that Defendants departed from good and accepted medical practice in their care and treatment of the Deceased Plaintiff from April 8, 2019 to April 18, 2019 by failing to properly treat her traumatic brain injury. The Deceased Plaintiff, who was a 20-year old college student was taken to the Emergency Department of St. Elizabeth by a friend on April 8, 2019, because she had had a headache for several days, she had vomited, and she had been sitting on her couch for a couple of days without moving. The Deceased Plaintiff’s clothes were covered in dirt and she claimed that she had fallen down a hill, but had no memory of the

details of the fall. The Deceased Plaintiff suffered severe head trauma, including an diagnostic tests which revealed that she had bi-frontal contusions and acute brain hemorrhages with surrounding edema and evidence of mild compression. She also had non-displaced fractures involving the lateral wall of the left orbit and lateral superior wall of the left maxillary sinus and multiple seizures.

Plaintiffs further allege that the Deceased Plaintiff was treated by Drs. Finch, Kannan, Kidwai, Kaul, Qandah, and Cherukuri, Physician Assistants Carangelo and Gehr, and other doctors, physician assistants, nurses and healthcare providers at St. Elizabeth. On April 9, 2019, the Deceased Plaintiff had seizures and became unresponsive so she was intubated. An MRI showed that her bi-frontal contusions and hemorrhages had become much larger, there were additional areas of bleeding, swelling which caused her brain to shift and pressure causing brain herniation. Dr. Kidwai placed an intracranial pressure monitor and the Deceased Plaintiff never regained consciousness. Later that night, Dr. Kidwai performed a ventriculostomy to drain cerebrospinal fluid. During the early morning hours of April 10, 2019, Dr. Kidwai performed a bilateral hemicraniotomy craniectomy to relieve the pressure on the Deceased Plaintiff's brain from her inter-cranial bleeding, but it was too late. The Deceased Plaintiff was declared brain dead on April 11, 2019. On April 17, 2019, her family consented to have her removed from life-support and she passed away. Plaintiffs further allege that Defendants' deviations caused the Deceased Plaintiff's condition to worsen and she suffered cerebral herniation and death.

The remaining Defendants, except St. Elizabeth and MVHS Group, moved for summary judgment in their favor and for dismissal of Plaintiffs' amended complaint against them.

As set forth below, Plaintiffs oppose the motions with one combined affirmation in opposition and they rely on the expert affirmations of James W. Holsapple, M.D., a

neurosurgeon, and Marc Hamet, M.D., a radiologist. Dr. Holsapple opined that Drs. Finch, Kidwai, Kannan and Qandah, PAs Carangelo and Gehr and St. Elizabeth, through its ICU nursing staff, departed from the standards of good and accepted practice in their care and treatment of the Deceased Plaintiff which contributed to the delays in care which contributed to her neurological decline and death and deprived her from the opportunity for a recovery. Dr. Hamet opined in substance that Dr. Kidwai's expert radiologist, Dr. Straub's, opinions were speculative and unsupported by the record.

Plaintiffs' opposition seeks sanctions based on alleged conflicts by a carrier and attorneys representing some of the defendants. The court declines to issue such sanctions and declines to require any of the defense counsel to withdraw their representation.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*see* CPLR 3212[b]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

In a medical malpractice action, a defendant doctor or provider moving for summary judgment must establish that in treating the plaintiff there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged (*Roques v. Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Scalisi v Oberlander*, 96 AD3d 106, 120 [1st Dept 2012]; *Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2d Dept 2009];

Rebozo v Wilen, 41 AD3d 457, 458 [2d Dept 2007]. It is well settled that expert opinion must be detailed, specific, based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming material facts not supported by the record (*see Roques*, 73 AD3d at 207; *Cassano v Hagstrom*, 5 NY2d 643, 646 [1959]; *Gomez v New York City Hous. Auth.*, 217 AD2d 110, 117 [1st Dept 1995]; *Aetna Casualty & Surety Co. v Barile*, 86 AD2d 362, 364-365 [1st Dept 1982]; *Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2d Dept 2008]). If a defendant's expert affidavit contains "[b]are conclusory denials of negligence without any factual relationship to the alleged injuries" and "fails to address the essential factual allegations set forth in the complaint" or bill of particulars, then it is insufficient to establish defendant's entitlement to summary judgment as a matter of law (*Wasserman v Carella*, 307 AD2d 225, 226 [1st Dept 2003] [internal quotations omitted]; *see Cregan v Sachs*, 65 AD3d 101, 108 [1st Dept 2009]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his or her failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

In medical and dental malpractice actions, to defeat the motion, a plaintiff must rebut the defendant's prima facie showing by submitting an affidavit from a physician attesting that the defendant departed from accepted medical or dental practice and that the departure was the proximate cause of the injuries alleged (*Roques*, 73 AD3d at 207). An expert affidavit which sets

forth general allegations of malpractice or conclusions, misstatements of evidence or assertions unsupported by competent evidence is insufficient to demonstrate that defendants failed to comport with accepted medical practice or that any such failure was the proximate cause of a plaintiff's injuries (*Coronel v. New York City Health & Hosps. Corp.*, 47 AD3d 456, 457 [1st Dept 2008]; *Alvarez*, 68 NY2d at 325).

Competing expert affidavits alone are insufficient to avert summary judgment since experts almost always disagree, but the question is whether plaintiff's expert's opinion is based upon facts sufficiently supported in the record to raise an issue for the trier of fact (*De Jesus v Mishra*, 93 AD3d 135, 138 [1st Dept 2012]). "Ordinarily, 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 Hospital*, 99 NY2d 542, 544 [2002] [internal quotations omitted]). However, "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment" (*id.*).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943, 944 [3d Dept 1965]). Summary judgment should be awarded when a party cannot raise a factual issue for trial (*Sun Yan Ko v Lincoln Sav. Bank*, 99 AD2d 943, 943 [1st Dept 1984]; CPLR 3212[b]).

1) Dr. Cherukuri's Summary Judgment Motion (004)

Defendant Dr. Cherukuri now moves for summary judgment and dismissal of Plaintiffs' amended complaint under motion sequence 004. Defendants Charles Eldredge, M.D., Parvez Asmat, M.D. and Gordon Archibald, M.D. also move for the court to so-order a Stipulation of

Discontinuance as to Defendants Drs. Eldredge, Asmat and Archibald. The court previously granted this portion of the motion on multiple occasions by so-ordering said Stipulation of Discontinuance on January 13, 2022, March 22, 2022 and August 30, 2022 (NYSCEF Doc. Nos. 212, 302 and 419, respectively). The court also amended the caption to delete their names.

Dr. Cherukuri argues in substance that he did not depart from the accepted standard of neurological care during his treatment of the Deceased Plaintiff. He argues that on April 8, 2019, he was called for a neurological emergency consult when she had a seizure in the ICU and on April 9, 2019, he was asked to assess whether she was brain dead after her neurosurgery. Dr. Cherukuri also argues that he did not cause her alleged injuries or death.

Dr. Cherukuri relies on the expert affirmation of Dr. Jay M. Coblenz and argues in substance that Dr. Cherukuri properly evaluated and treated the Deceased Plaintiff's seizures and ordered an MRI. He properly decided not to transfer her to another facility because of her deteriorated condition and that consultation with a neuroradiologist was not necessary, as she was already being evaluated by the neurosurgeons. Dr. Cherukuri further argues that Plaintiffs' experts failed to allege that he deviated from the applicable standard of care and that they did not mention his care at all.

Plaintiff opposes the portion of the motion pertaining to Dr. Cherukuri.

The court grants Dr. Cherukuri's summary judgment motion and dismisses Plaintiffs' amended complaint against him. The court finds that Dr. Cherukuri met his burden of demonstrating his entitlement to judgment in his favor as a matter of law and Plaintiffs' experts failed to contradict or even address his expert's opinion, failed to allege a departure and failed to allege causation. Therefore, Plaintiffs failed to raise a triable issue of material fact. Plaintiffs' counsel's attempts to create issues of fact are insufficient to defeat this motion.

Therefore, the court grants Dr. Cherukuri's summary judgment motion and dismisses Plaintiffs' amended complaint against him under motion sequence 004.

2) Neuro-Interventional, Neuro Sciences, MVHS, Dr. Kannan, Dr. Finch and Dr. Kaul's Motion for Summary Judgment (005)

Defendants Neuro-Interventional, Neuro Sciences, MVHS, Drs. Kannan, Finch and Kaul now move for summary judgment and dismissal of Plaintiffs' amended complaint under motion sequence 005. Although the notice of motion, affirmation in support of the motion and expert affirmation appear to include St. Elizabeth as a movant, in their reply, the movants indicated that they were not moving for summary judgment on behalf of St. Elizabeth.

The movants argue in substance that Dr. Finch examined the Deceased Plaintiff in St. Elizabeth's Emergency Department for a physical and neurological examination. Dr. Finch ordered a STAT head CT scan which indicated a bifrontal acute hemorrhage with surrounding edema left greater than right, with no shifting structures in the brain. They further argue that Dr. Finch timely consulted with neurosurgery and spoke with neurosurgery PA Carangelo, who consulted with the on-call physician, Dr. Kidwai. At neurosurgery's request, Dr. Kannan became the ICU attending physician and the Deceased Plaintiff was transferred to the ICU, where Dr. Kidwai, PA Gehr and others began treating her.

The movants further argue that once Dr. Finch ordered the neurosurgery consult, neurosurgery assumed responsibility for treating the Deceased Plaintiff's neurological condition. Dr. Finch was no longer involved in the Deceased Plaintiff's treatment. Although Dr. Kannan placed monitoring orders, the movants argue that he assumed a supportive role. They further argue in substance that Dr. Kannan, neurology and neurosurgery considered transferring the Deceased Plaintiff, but they could not do so because she was unstable.

The movants further argue that Dr. Kidwai and Dr. Kaul ordered a sedative and muscle relaxer and Dr. Munir performed an intubation procedure. Dr. Kaul set the ventilator settings and monitored the ventilator and the Deceased Plaintiff's respiratory conditions. Dr. Kidwai ordered another MRI of the brain, which indicated that the Deceased Plaintiff's brain bleed had progressed. Dr. Kidwai advised the Deceased Plaintiff's parents that there was very little that neurosurgery could do. He performed a ventriculostomy and implanted an ICP monitoring device to control the fluid being drained. Since the Deceased Plaintiff failed to improve, Dr. Kidwai performed a craniectomy, but the Deceased Plaintiff remained in a coma and was subsequently declared brain dead.

The movants rely on the expert affirmations of Joel M. Bartfield, M.D., FACEP and Thomas P. Collins, D.O. and affidavit of Darlene Stromstad.

Ms. Stromstad, the President and CEO of Mohawk Valley Health System and its affiliated corporations, including Neuro-Interventional and Neuro Sciences, stated in substance that none of these entities provided any services to the Deceased Plaintiff and none of the Defendants were employed, supervised or controlled by any of these entities during the relevant time period. The affidavit is silent as to Defendant MVHS Medical Center.

Dr. Bartfield opined in substance that Dr. Finch and vicariously, St. Elizabeth, did not deviate from accepted standards of medical practice in treating the Deceased Plaintiff and they did not cause or contribute to any of the Deceased Plaintiff's injuries. Dr. Bartfield stated in substance that Dr. Finch acted timely and appropriately by ordering a STAT head CT and subsequent neurosurgical consult upon review of the results.

Dr. Collins stated in substance that Dr. Kaul, Dr. Kannan and vicariously, St. Elizabeth, did not deviate from accepted standards of medical care in their treatment of the Deceased

Plaintiff and they did not cause or contribute to her injuries. Dr. Kaul was a pulmonary intensivist and he became involved in the Deceased Plaintiff's intubation and pulmonary/respiratory care. Plaintiffs' expert failed to allege any departures by Dr. Kaul. Dr. Collins further stated that Plaintiffs' allegations against Dr. Kaul in their Bill of Particulars are outside the scope of Dr. Kaul's expertise and practice.

Dr. Collins further stated in substance that Dr. Kannan was a general practitioner and hospitalist and not a neurologist. He acted as the admitting physician for St. Elizabeth in name only. He ordered consults, labs and medications in collaboration with neurosurgery. He deferred to neurosurgery's recommendations and his role was to provide supplemental medical management and to aid in the coordination of care with the neurosurgical team. Since the Deceased Plaintiff had neurosurgical issues, neurosurgery ordered the medication and directed her treatment. Dr. Collins opined that the hourly neurological monitoring, the admittance to the ICU and the rest of the treatment of the Deceased Plaintiff by Drs. Kaul and Kannan were in accordance with the applicable standard of care.

Plaintiffs oppose the motion. Plaintiffs' expert, Dr. Holsapple, opined in substance that Dr. Finch, as the Emergency Department physician, and Dr. Kannan, as the admitting physician, deviated from the standard of care by failing to arrange for a bedside evaluation by the on-call neurosurgeon or his or her agent in the Emergency Department and/or ICU at the time of the Deceased Plaintiff's admission. Plaintiffs expert also opines in substance that they deviated by failing to rapidly transfer the Deceased Plaintiff to another facility where she could have received an appropriate bedside neurosurgical evaluation.

The court grants this motion and finds that the movants demonstrated their entitlement to summary judgment in their favor as a matter of law and Plaintiffs failed to demonstrate a

material issue of fact based on sufficient admissible evidence. Plaintiffs failed to oppose the movants' arguments or their experts' opinions as to Defendants Neuro-Interventional, Neuro Sciences, MVHS and Dr. Kaul. The movants demonstrated that Neuro-Interventional, Neuro Sciences and MVHS did not employ, supervise or direct any of the Defendants and they did not provide any care or treatment to the Deceased Plaintiff. Additionally, Dr. Kaul was involved in the Deceased Plaintiff's ventilator and respiratory care and not her neurological or neurosurgical treatment. Plaintiffs failed to identify any departure or causation attributable to Dr. Kaul.

The court also grants dismissal as to Dr. Finch as the evidence supports the movants' arguments that when the Deceased Plaintiff was examined in the Emergency Department, she did not demonstrate symptoms consistent with brain hemorrhage. Therefore, there was no deviation for Dr. Finch failing to order an immediate bedside neurosurgical consultation in the Emergency Department at that time. The court agrees that the evidence demonstrated that Dr. Finch ordered the appropriate test and once she saw the results, she timely contacted neurosurgery. Neurosurgery ordered the Deceased Plaintiff to be transferred to ICU, where Dr. Finch's treatment ceased. Additionally, Plaintiffs' experts failed to contradict the movants' experts' opinions that Dr. Finch acted timely, properly and did not depart from accepted medical practice or that she did not cause or contribute to the Deceased Plaintiffs injuries or death.

Additionally, the court dismisses Plaintiffs amended complaint against Dr. Kannan because Plaintiffs' failed to raise a triable issue of fact as to whether Dr. Kannan deviated from accepted standard of medical practice as the admitting physician. The evidence supported the movants' arguments that Dr. Kannan, who was not a neurologist or neurosurgeon, appropriately deferred to the recommendations and knowledge of the neurosurgery team to treat the Deceased Plaintiff for her rapidly declining neurological condition. There is no evidence to support

Plaintiffs' claims that Dr. Kannan should have ordered a bedside evaluation by the on-call neurosurgeon in the ICU, since the neurosurgery team had already been contacted by Dr. Finch and they were already involved in the Deceased Plaintiff's treatment. Additionally, there is no evidence to support Plaintiffs' claim that Dr. Kannan should have transferred the Deceased Plaintiff to a new facility where she could have gotten such treatment early on in her treatment or when her condition became unstable.

Therefore, Plaintiffs failed to demonstrate issues of fact based on admissible evidence that any of the movants deviated from good and accepted practice or that their conduct caused or contributed to the Deceased Plaintiff's injuries or death.

As such, the court grants motion sequence 005 and dismisses Plaintiffs' amended complaint against Defendants Neuro-Interventional, Neuro Sciences, MVHS, and Drs. Kannan, Finch and Kaul.

3) Dr. Farook Kidwai's Motion for Summary Judgment (006)

Dr. Kidwai now moves for summary judgment in his favor and to delete his name from the caption under motion sequence 006. The court denies this motion.

Dr. Kidwai relies on the expert affirmation of Birva Straub, M.D. and his own affirmation. Dr. Straub opined in substance that Dr. Kidwai was not a contributing factor or proximate cause of the Deceased Plaintiff's alleged injuries. Dr. Straub further opined in substance that the Deceased Plaintiff suffered an undiagnosed anterior sagittal sinus blood clot between her two frontal lobes, which caused an ischemic stroke. Dr. Straub further opined that the inability of blood to flow through the sagittal sinus because of the clot, created cytotoxic brain edema, or swelling, and hemorrhage, which caused the Deceased Plaintiff to become brain

dead from the lack of oxygen to her brain cells. Dr. Straub further opined that the sagittal sinus thrombosis could have been caused by a hypercoagulable state from birth control pills.

Dr. Straub further stated that the sagittal sinus venous thrombosis or clot was undiagnosed by the reviewing radiologist and that such condition is not treated by neurosurgeons like Dr. Kidwai, but by neuroendovascular surgeons. Therefore, since the clot caused the Deceased Plaintiff's injuries and Dr. Kidwai was not informed of the clot, his performance of a craniectomy to attempt to reduce the pressure on the Deceased Plaintiff's brain was unsuccessful in preventing further brain damage, since the Deceased Plaintiff's condition was irreversible. Dr. Kidwai further argues that he was not advised of the presence of a clot and that had he been informed of the clot, then he would have requested an immediate neuroendovascular surgery expert opinion on the best course of treatment.

Plaintiffs oppose the motion and argue in substance that Dr. Kidwai knew about the clot because he reviewed and interpreted the films, he advised the Deceased Plaintiff's father about the clots, showed him the clots on the films and advised him that surgery was needed. Plaintiffs also argue that Dr. Kidwai noted that the Deceased Plaintiff's injury was a traumatic brain injury which he believed was caused by an assault and not caused by blood clots. Dr. Cherukuri noted that the cause of the Deceased Plaintiff's injury and brain death was trauma and not a stroke from using birth control pills. Plaintiffs also argue in substance that Dr. Kidwai's excuses for delaying in operating on the Deceased Plaintiff were not based on the facts and should be ignored by the court. They also argue that Defendants' failure to administer medications critical for treating edema and intracranial pressure and their other departures caused and contributed to the Deceased Plaintiff's death.

In reply, Dr. Kidwai's arguments include that the court should disregard Dr. Hamet's affirmation because it lacked a certificate of conformity.

The court finds that Dr. Kidwai failed to demonstrate his entitlement to judgment in his favor as a matter of law and the absence of disputed issues of material fact. The court also finds that Dr. Kidwai's expert, Dr. Straub's, opinions were speculative and unsupported by, if not contradicted by, the medical records and other evidence.

In the alternative, the court determines that even if Dr. Kidwai had met his initial burden, then Plaintiffs raised disputed issues of material fact. Although Dr. Kidwai did not argue that his care was within accepted standard of medical practice, Plaintiffs' expert, Dr. Holsapple, opined in substance that Dr. Kidwai's and his agents' deviations included failing to offer and/or perform a timely decompressive craniectomy and/or provide effective aggressive management and treatment of the Deceased Plaintiff's advancing cerebral swelling and cerebral herniation; failing to timely restart the hypertonic solution once the Deceased Plaintiff arrived at the ICU; failing to order and/or perform and record sufficient and frequent bedside neurological examinations; and failing to timely and appropriately order diagnostic tests. Dr. Holsapple disagreed with Dr. Straub's opinion that a thrombosis of the anterior superior sagittal sinus related to the use of birth control pills was evident and played a major role in the Deceased Plaintiff's traumatic brain injury, cerebral edema and catastrophic neurological decline.

Plaintiffs' expert, Dr. Hamet, also disagreed with Dr. Kidwai's expert's opinion regarding causation. Dr. Hamet opined in substance that the Deceased Plaintiff had bi-frontal lobe brain contusion and hemorrhage secondary to a traumatic event. The subsequent edema caused increased intracranial pressure, which led to a lack of blood flow to the brain, resulting in brain death. He further opined in substance that although the Deceased Plaintiff had a venous

Sagittal Thrombus/sagittal sinus blood clot, she did not suffer a stroke or aneurysm from the use of birth control pills and it was not the cause of brain ischemia, her other injuries or death. Dr. Hamet stated in substance that the traumatic brain injury, edema and restricted blood flow caused the blood clots. Dr. Hamet further stated that none of Defendants' experts agreed with Dr. Straub and Dr. Kidwai and the Deceased Plaintiff's treating radiologist and neurologist all disagreed with Dr. Straub. Dr. Hamet further stated in substance that Dr. Kidwai waited too long to perform a craniotomy and that the Deceased Plaintiff was already clinically brain dead.

The court finds that Plaintiffs' experts' opinions contradict Dr. Kidwai's experts' opinions and create issues of fact regarding whether Dr. Kidwai's or his agents' alleged deviations from accepted standards of care caused or contributed to the Deceased Plaintiff's injuries or death.

Therefore, the court denies Dr. Kidwai's summary judgment motion.

4) Dr. Qandah's, PA Carangelo's and PA Gehr's Summary Judgment Motion (007)

Defendants Dr. Qandah, PA Carangelo and PA Gehr now move for summary judgment in their favor and deletion of their names from the caption under motion sequence 007. They rely on the expert affirmations of Dr. Birva Straub and Dr. Nirit Weiss. Dr. Straub's opinions were discussed above for Dr. Kidwai's motion. Dr. Weiss opined in substance that the care provided by neurosurgical PAs Carangelo and Gehr was at all times within good and accepted neurosurgery practice, they committed no departures, and their care did not cause the Deceased Plaintiff's injuries. Dr. Weiss further opined that PAs Carangelo and Gehr timely and properly implemented Dr. Kidwai's instructions regarding the Deceased Plaintiff's care and treatment.

Dr. Weiss further stated in substance that since the Deceased Plaintiff was neurologically stable and alert, PA Carangelo did not deviate from good and accepted neurosurgical practice by

not coming to the Emergency Department immediately when he spoke to Dr. Finch. Dr. Weiss stated in substance that it was appropriate for him to review the medical records remotely, contact Dr. Kidwai, who was the on-call neurosurgeon, and issue the orders, medications and treatment instructions as directed by Dr. Kidwai. These orders included transferring the Deceased Plaintiff to the ICU under the care of Dr. Kannan. PA Carangelo examined the Deceased Plaintiff the next day and continued to issue timely orders pursuant to Dr. Kidwai's instructions and timely relay proper information to and from Dr. Kidwai. Dr. Weiss further stated that PA Carangelo did not make any treatment or management decisions on his own.

Dr. Weiss further opined that PA Gehr did not depart from good and accepted standards of care. PA Gehr accompanied Dr. Kidwai when Dr. Kidwai performed his initial in-person physical examination of the Deceased Plaintiff and PA Gehr accurately recorded Dr. Kidwai's findings and recommendations. PA Gehr issued timely orders and treatment instructions as directed by Dr. Kidwai. He was not involved in the treatment decisions prior to the Deceased Plaintiff's surgery, he did not administer any medications and he did not make any inappropriate treatment or management decisions on his own.

Additionally, Dr. Weiss opined that all of Plaintiffs' allegations against Dr. Qandah regarding his failure to timely diagnose and treat the Deceased Plaintiff's bifrontal brain contusions and hemorrhages which led to her injuries and death are unsupported by the record. Dr. Weiss opined that Dr. Qandah did not provide any care and treatment to the Deceased Plaintiff, nor was he involved in making any treatment decisions. He was also not responsible for Plaintiffs' claims which would normally be directed toward a hospital or provider. Dr. Qandah only attended a conference with the Deceased Plaintiff's family after the Deceased Plaintiff's craniectomy surgery when she was already on life-support, she was unresponsive and her fatal

injuries had occurred. Dr. Kidwai was the neurosurgeon responsible for her treatment and he directed the PAs to place certain orders and directed their treatment of the Deceased Plaintiff.

Plaintiffs oppose the motion and rely on their same experts, Dr. Holsapple and Dr. Hamet. Plaintiffs argue in substance that PAs Carangelo and Gehr and St. Elizabeth's nurses failed to order and perform serial neurological checks. PA Carangelo wrote conflicting orders for neurological checks to be every two hours and then every hour, but Dr. Kannan ordered hourly checks. However, the staff deviated by failing to perform the checks at certain times throughout the day, so the Deceased Plaintiff's true condition was not conveyed to the providers and her brain herniation was unnoticed, undocumented and untreated.

Plaintiffs' expert, Dr. Holsapple, opined in substance that the St. Elizabeth's nursing staff, Dr. Kidwai, PA Carangelo, PA Gehr, Dr. Kannan and Dr. Kannan's PAs all deviated from the standard of care by failing to re-administer the hypertonic solution once the Deceased Plaintiff arrived at the ICU, until approximately twelve hours later and they failed to order and/or perform and record sufficient and frequent bedside neurological examinations. Plaintiffs further argue that after Dr. Kidwai and PA Carangelo deviated by failing to examine the Deceased Plaintiff in the Emergency Department and that Dr. Kidwai and PA Gehr deviated by failing to examine and timely treat her in the ICU.

Dr. Holsapple further opined in substance that Dr. Qandah treated the Deceased Plaintiff as a consulting physician. Dr. Holsapple opined that during a telephone call between RN Scaranuzzino and PA Carangelo, Dr. Qandah indicated that he had reviewed the Deceased Plaintiff's MRI results and said he was putting in new orders, but he departed by failing to implement the orders. Additionally, Dr. Holsapple opined that Dr. Qandah deviated by deferring the Deceased Plaintiff's bedside evaluation to Dr. Kidwai. Therefore, Plaintiffs argue in

substance that Dr. Qandah was also responsible for failing to timely and properly treat the Deceased Plaintiff's injuries and he contributed in causing her injuries and death.

The court finds that Dr. Qandah, PA Carangelo and PA Gehr demonstrated their entitlement to summary judgment in their favor as a matter of law and Plaintiffs failed to raise any material issues of fact based on admissible evidence. Plaintiffs' experts failed to address Defendants' experts' opinions and the evidence which demonstrated that PAs Carangelo and Gehr timely and properly placed treatment orders and implemented such orders as directed by Dr. Kidwai. They did not make any improper treatment decisions on their own and that their care for which they were responsible was within good and accepted neurosurgical practice. Furthermore, Plaintiffs failed to raise an issue of fact based on admissible evidence regarding how PA Carangelo's alleged incorrect or inconsistent entries in the Deceased Plaintiff's chart caused or contributed to her injuries or death.

Additionally, the court finds that the evidence demonstrates that Dr. Qandah's limited involvement with the Deceased Plaintiff and her family did not rise to the level of treatment, such that he could be held responsible for failing to timely and properly treat her alleged injuries. As the movants noted, RN Scaranuzzino explained that when Dr. Qandah spoke in the background during her telephone call with PA Carangelo, the orders she referred to came from PA Carangelo and not Dr. Qandah. The court finds that even if Plaintiffs demonstrated that the Dr. Qandah said he would put in new orders, Plaintiffs failed to provide any details about the orders or explain how his failure to give the new orders was a deviation from the standard of care and how it caused or contributed to the Deceased Plaintiffs' alleged injuries. Furthermore, Dr. Qandah's involvement with the Deceased Plaintiff was after her surgery and after her alleged injuries had occurred, so Plaintiffs failed to demonstrate a question of fact regarding causation.

Therefore, Plaintiffs failed to demonstrate the existence of a disputed material fact based supported by the evidence. Plaintiffs failed to show that Dr. Qandah, or PAs Carangelo or Gehr deviated from accepted medical standard on their own accord or that they caused or contributed to the Deceased Plaintiff's injuries or death.

Thus, the court grants Defendants Dr. Qandah's, PA Carangelo's and PA Gehr's motion for summary judgment under motion sequence 007.

5) Defendant Emergency Physician Services' Summary Judgment Motion (008)

Defendant Emergency Physician Services now moves under motion sequence 008 for summary judgment in its favor and it relies on the expert affirmation of Andrew E. Sama, M.D. Dr. Sama opined that Emergency Physician Services' liability is limited to its vicarious liability based on Dr. Finch's conduct. However, it is not liable because Dr. Finch did not deviate from good and accepted standard of care and in no way did she cause or contribute to Plaintiffs' alleged injuries or damages. Dr. Sama further opined that Plaintiffs' allegations against Dr. Finch are limited to allegations related to the neurosurgical care and treatment which falls outside the scope of Dr. Finch's role as an emergency medicine physician. Dr. Sama stated in substance that Dr. Finch timely consulted neurosurgery after reviewing the CT scan results and deferred to neurosurgery since they assumed the neurosurgical management of the Deceased Plaintiff. Additionally, Dr. Sama opined that Dr. Finch's initial evaluation, examination, orders for diagnostic testing and care of the Deceased Plaintiff were appropriate at all times.

Emergency Physician Services also argues in substance that Plaintiffs' sole basis for New York County as the venue was based on Emergency Physician Services' former place of business, which is a marginal nexus since the court should dismiss Plaintiffs' amended complaint against it and Dr. Finch.

Plaintiffs oppose the motion with their same opposition papers and rely on their same two experts, Drs. Hamet and Holsapple. The court discussed Plaintiffs' opposition above while discussing Dr. Finch's summary judgment motion.

The court finds that Defendant Emergency Physician Services demonstrated its entitlement to summary judgment in its favor as a matter of law and Plaintiffs failed to raise a material issue of fact based on admissible evidence sufficient to defeat this motion. As Emergency Physician Services argued, its vicarious liability is limited to Dr. Finch's potential liability. As the court discussed above during Dr. Finch's summary judgment motion, the court finds that based on the Deceased Plaintiff's condition when Dr. Finch evaluated her in the Emergency Department, there is no evidence that Dr. Finch departed from the standard of care for emergency medicine. Dr. Finch timely ordered a CT scan and consulted with neurosurgery once she saw its results. Plaintiffs failed to contradict the movant's expert's opinion that as an emergency medicine physician, it was appropriate for Dr. Finch to defer to the neurosurgeons for the continuing care of the Deceased Plaintiff's neurological condition. Dr. Finch had no further involvement with the Deceased Plaintiff's treatment once the Deceased Plaintiff was transferred to the ICU. Additionally, the court finds that Plaintiffs failed to raise a disputed factual issue regarding departures or causation as to Dr. Finch.

Therefore, the court grants Defendant Emergency Physician Services' summary judgment motion filed under motion sequence 008.

It does not appear that Defendants St. Elizabeth Medical Center and MVHS Medical Group moved for summary judgment and since the court denied Dr. Farook Kidwai's motion for summary judgment, the court severs and continues Plaintiffs' claims against these defendants.

The court also amends the caption in this action to reflect the dismissals of Plaintiffs' amended complaint as set forth in this decision and order.

The court has considered any additional arguments raised by the parties, but not specifically addressed herein, and the court denies all requests for relief, not expressly granted herein.

As such, it is hereby

ORDERED that as to motion sequence 004, the court grants Defendant Remesh Cherukuri's summary judgment motion and dismisses Plaintiffs' amended complaint as against Defendant Remesh Cherukuri without costs to any party and the court grants the portion of the motion requesting the court to so-order Plaintiffs' Stipulation of Discontinuance, which was previously completed; and it is further

ORDERED that as to motion sequence 005, the court grants Defendants Mohawk Valley Health System's, Neuro-Interventional Surgery and Comprehensive Stroke Group's, Neuro Sciences Group's, Dr. Arul Kannan's, Dr. Dana Finch's and Dr. Sushma Kaul's motion for summary judgment and the court dismisses Plaintiffs' amended complaint against Defendants Mohawk Valley Health System, Neuro-Interventional Surgery and Comprehensive Stroke Group, Neuro Sciences Group, Dr. Arul Kannan, Dr. Dana Finch and Dr. Sushma Kaul without costs to any party; and it is further

ORDERED that as to motion sequence 006, the court denies Defendant Farook Kidwai's motion for summary judgment; and it is further

ORDERED that as to motion sequence 007, the court grants Defendants Dr. Nicholas Qandah's, PA Alexander Carangelo's and PA Kevin Gehr's motion for summary judgment and

the court dismisses Plaintiffs' amended complaint as against Defendants Nicholas Qandah, PA Alexander Carangelo and PA Kevin Gehr without costs to any party; and it is further

ORDERED that as to motion sequence 008, the court grants Defendant Emergency Physician Services of New York, P.C.'s motion for summary judgment and the court dismisses Plaintiffs' amended complaint against Defendant Emergency Physician Services of New York, P.C. without costs to any party; and it is further

ORDERED that the court severs and continues Plaintiffs' claims against Defendants St. Elizabeth Medical Center and Farook Kidwai; and it is further

ORDERED that the court amends the caption in this matter to delete the names of the defendants for whom dismissal was granted and directs the Clerk of the Court to amend the caption to the following:

-----X
 FARZANA SULTANA as Administrator of the Estate of
 FARDUSH SULTANA, deceased, FARZANA SULTANA,
 Individually, ABUL BASHAR and PARVEEN AKHTER

Plaintiffs,

-against-

ST. ELIZABETH MEDICAL CENTER, MVHS
 MEDICAL GROUP and FAROOK KIDWAI, M.D.,

Defendants.

-----X
 and it is further

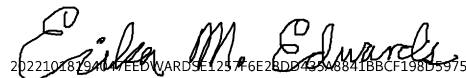
ORDERED that counsel for Defendants St. Elizabeth Medical Center, Mohawk Valley Health System, MVHS Medical Group, Neuro-Interventional Surgery and Comprehensive Stroke Group, Neuro Sciences Group, Arul Kannan, Dana Finch and Sushma Kaul shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre

Street, Room 119) within twenty (20) days of the date of this order, who is directed to mark the court’s records to reflect the amended caption; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (ww.nycourts.gov/supctmanh)]; and it is further

ORDERED that the remaining parties are directed to appear for a status conference and to set a trial date on December 8, 2022, at 9:30 a.m. in Part 10, located at 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.


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10/18/2022
DATE

ERIKA M. EDWARDS, 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