

Fernandez v Hoke
2022 NY Slip Op 34069(U)
November 30, 2022
Supreme Court, New York County
Docket Number: Index No. 805052/2019
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ERIKA EDWARDS

PART 10M

Justice

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JUAN FERNANDEZ,

Plaintiff,

- v -

GERALD HOKE, M.D. and BRIAN DAVIS-JOSEPH, M.D.,
NEW YORK CITY HEALTH & HOSPITALS
CORPORATION, ERIC BORTNICK, M.D., JAY MOTOLA,
M.D., MOUNT SINAI ST. LUKE'S, THE MOUNT SINAI
HOSPITAL, THE MOUNT SINAI MEDICAL CENTER, INC.,
JANUSZ PLAWNER, M.D. and TOTAL MEDICAL, P.C.,

Defendants.

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INDEX NO. 805052/2019MOTION DATE 03/11/2022,
03/11/2022MOTION SEQ. NO. 001, 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 119, 121, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 122, 123, 124, 125, 126, 127, 128, 141

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents and oral argument held before this court on September 16, 2022, the court grants Defendants Eric Bortnick, M.D.'s ("Bortnick"), Jay Motola, M.D.'s ("Motola"), St. Luke's-Roosevelt Hospital Center's s/h/a Mt. Sinai St. Luke's and Mt. Sinai Medical Center, Inc.'s ("SLRH") motion for summary judgment, filed under motion sequence 001, and the court dismisses Plaintiff Juan Fernandez' ("Plaintiff") complaint against Defendants Bortnick, Motola and SLRH.

The court also grants Defendants Gerald Hoke, M.D.'s ("Hoke"), Brian Davis-Joseph, M.D.'s ("Davis-Joseph") and New York City Health & Hospitals Corporation's ("NYCHHC")

motion for summary judgment, filed under motion sequence 002, and the court dismisses Plaintiff's complaint against Defendants Hoke, Davis-Joseph and NYCHHC.

Plaintiff brought this medical malpractice action against Defendants Hoke, Davis-Joseph, NYCHHC, Bortnick, Motola, SLRH and non-movants Janusz Plawner, M.D. ("Plawner") and Total Medical, P.C. ("Total Medical") (collectively, "Defendants"). Plaintiff alleges in substance that Defendants deviated from accepted standards of medical practice in their care and treatment of Plaintiff from November 11, 2017 to April 2019. Plaintiff further alleges in substance that Defendants failed to timely admit Plaintiff and immediately perform surgery to treat and remove his obstructive renal calculi and calcified ureteral stent, which caused Plaintiff to develop hydronephrosis, kidney damage, perinephric stranding and infection, resulting in urosepsis and septic shock. Plaintiff also alleges that he suffered cardiovascular collapse and constriction of the peripheral blood vessels and arteries which resulted in clot formation and necrosis of all four extremities requiring amputations of both legs, hands and wrists.

Plaintiff had a history of renal stones and he developed pain on his left side and lower back. He was treated at Harlem Hospital, where Dr. Hoke was the attending urologist, on November 11-12, 2017, January 10, 2018 and April 3, 2018. On November 11, 2017, Plaintiff was treated in the Emergency Department with complaints of left side pain and tenderness, lower back pain, nausea, vomiting, fever and chills. He was diagnosed with an obstructing 1 cm calculus at the left ureteral pelvic junction causing mild to moderate left sided hydronephrosis. He received intravenous gentamycin. On November 12, 2017, Defendant Dr. Hoke performed a procedure to place a left ureteral stent at the left ureteral pelvic junction. Plaintiff was directed to follow up with outpatient treatment at the urology clinic to treat and remove the obstructing calculus. Plaintiff had no infection and his treatment was determined to be elective. On

November 17, 2017, Plaintiff sought treatment at the clinic, but he was told that they did not accept his insurance and he was not treated.

On January 10, 2018, Plaintiff was treated in the Emergency Department for complaints of pain on his left side, back, abdomen and while urinating, gross hematuria, increased urinary frequency and suprapubic tenderness. Some symptoms began three weeks earlier. He was found to have moderate left sided hydronephrosis and calculus with a double-J stent. Plaintiff was administered an antibiotic and was negative for infection. Plaintiff went to the urology clinic, but again, he was turned away because it did not accept his insurance.

Plaintiff was treated in the Emergency Department of SLRH on January 20, 2018, and at the outpatient urology clinic from January 22, 2018 to March 5, 2018, where Dr. Motola was the attending urologist. On January 20, 2018, Plaintiff complained of hematuria, urinary retention, frequent urination and making small amounts of urine. A Foley catheter was placed and Plaintiff was prescribed an antibiotic and pain medication. Plaintiff was treated at the outpatient urology clinic on January 22, 2018, and he was negative for infection. Dr. Motola recommended a stent exchange and ureteroscopy to treat Plaintiff's large stone, but Plaintiff still had to be medically cleared for the procedure.

Plaintiff obtained the required CT Scan of his abdomen and pelvis. He visited his primary care physician, Dr. Petya Petrov, at Defendant Total Medical on March 16, 2018, to obtain clearance for the procedure, but Dr. Petrov referred Plaintiff to Defendant Dr. Plawner, who was a urologist at Defendant Total Medical, for a ureteroscopy. Plaintiff was treated by Dr. Plawner on March 28, 2018, April 4, 2018, and April 12, 2018.

On April 3, 2018, Plaintiff returned to the Emergency Department at Harlem Hospital with complaints of pelvic and perineal pain, blood in his urine, difficulty urinating, making small

amounts of urine and cramping and lower abdominal pain for two to three months. Plaintiff was administered pain medications. He was diagnosed with a 10 x 5 mm calculus in the left renal pelvis adjacent to the ureteral stent, both mild and moderate hydronephrosis of the left kidney were noted and mild left perinephric standing. It was noted that he had a calcified stent from his kidney to his bladder, additional calcifications related to his original stone and additional stones in his kidney. Dr. Davis-Joseph indicated that the likely cause of Plaintiff's discomfort was the calcification in the bladder attached to the stent. Plaintiff alleges that Harlem Hospital discharged Plaintiff without any follow up or assistance resolving his lack of acceptable insurance issue.

On April 4, 2018, Plaintiff was treated by Dr. Plawner at Total Medical, who suggested treatment by percutaneous nephrolithotomy or ESWL and if successful, removal of the stent. Plaintiff chose ESWL and was cleared for the procedure by Dr. Bernstein at Total Medical.

On April 5, 2018, a nurse at Harlem Hospital attempted to contact Plaintiff by telephone and telegram to advise him in substance that his urine culture indicated that he had an infection and he was prescribed Bactrim. Harlem Hospital has no record that Plaintiff responded to the calls or telegram, but Plaintiff picked up the prescription from the pharmacy.

On April 12, 2018, Dr. Plawner removed Plaintiff's stent, but did not replace it or remove the obstructing left renal calculus. Dr. Plawner scheduled an ESWL on May 4, 2018.

On April 29, 2018, Plaintiff was treated at NYPH Columbia University Hospital with complaints of pain on his left side, weakness, headache, nausea, vomiting and dizziness. He was found to have a 1.3 cm obstructing ureteral calculus, severe hydronephrosis and he was septic due to an infection. He had an emergent procedure of percutaneous nephrostomy. Plaintiff's urosepsis caused septic shock, requiring the need for pressors and he ultimately had to have amputations of all four limbs.

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 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 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]).

A. Defendants Bortnick’s, Motola’s and SLRH’s Motion for Summary Judgment (Motion Sequence 002)

Defendants Bortnick, Motola and SLRH now move under motion sequence 002 for summary judgment in their favor and dismissal of Plaintiff’s complaint. The movants rely on the expert affirmation of urologist, David Albala, M.D., and argue in substance that Defendants Bortnick, Motola and the employees of SLRH conformed to good and accepted medical practice in their care and treatment of Plaintiff and none of their acts or omissions were a proximate cause of Plaintiff’s urosepsis, septic shock and amputations. The movants further argue that Plaintiff had a preexisting urological condition when he was treated at SLRH, that Dr. Motola and his staff properly evaluated and treated Plaintiff’s urological complaints and that they prepared Plaintiff for a surgical procedure to address his problems. However, Plaintiff voluntarily ended his relationship with them and sought treatment by other providers at other facilities. The movants further argue that Plaintiff was not diagnosed with urosepsis until eight weeks after he was last treated by the movants on March 5, 2018, so such condition is far removed from their care and treatment of Plaintiff.

The movants further argue that Plaintiff was treated at the SLRH Emergency Department on January 20, 2018, and was diagnosed with a possible urinary tract infection. There were no symptoms of systemic infection and no need for urgent admission. A Foley catheter was inserted and he was treated, given prescriptions for antibiotic and pain medications and instructed to follow up at the outpatient clinic two days later. He was seen at the clinic on January 22, 2018, February 5, 2018, February 19, 2018, and March 5, 2018.

The movants further argue in substance that Plaintiff was diagnosed with left urolithiasis and urinary retention and Dr. Motola properly recommended a stent exchange and ureteroscopy to treat Plaintiff's large stone. The movants further argue that the procedure was elective because Plaintiff did not have signs of impending bilateral acute kidney failure and he had a functioning stent and Foley catheter that allowed urine to flow. Plaintiff was directed to get medical clearance for the surgery, and to complete an abdominal/pelvic CT scan, further labs, urine analysis and urine culture, but Plaintiff failed to follow up to get the necessary clearance and complete all of the tests.

The movants further argue in substance that their actions or inactions were not the proximate cause of Plaintiff's alleged injuries. Plaintiff was last treated at SLRH on March 5, 2018 and he terminated his physician-patient relationship with SLRH when he sought treatment by other urologists and providers. The movants further argue that, consistent with their determinations, the other providers did not admit Plaintiff into a hospital for emergent or urgent surgery and they did not waive the pre-operative clearance requirements. Additionally, the movants argue that Dr. Plawner's procedure on April 12, 2018 to remove the stent and stone manipulation without replacing the stent and removing the stone simultaneously, was an unforeseeable, intervening act for which the movants are not responsible. Two months after

Plaintiff was treated at SLRH he developed an obstruction, urosepsis, septic shock and cardiovascular collapse, requiring the use of vasodilators, which led to gangrene and the amputation of all four of his extremities. Therefore, the movants argue that their actions or inactions were not the proximate cause of Plaintiff's injuries.

The movants further argue that the court should grant summary judgment to Dr. Bortnick because he was a urology resident who treated Plaintiff under the direct supervision of Dr. Motola, who was the attending. Additionally, there were no departures, Dr. Bortnick did not exercise any independent medical judgment and there was no failure to intervene.

Plaintiff opposes the motion pertaining to Dr. Motola and SLRH, but fails to oppose the portion of the motion pertaining to Dr. Bortnick. Plaintiff argues in substance that the movants failed to establish a prima facie entitlement to summary judgment for medical malpractice in that their expert failed to acknowledge Plaintiff's testimony and claims. Plaintiff relies on his expert's affirmation and argues in substance that the movants deviated from good and accepted medical standards by failing to provide definitive, proper treatment for Plaintiff's obstructive ureteral calculus, which resulted in a neglected ureteral stent which became calcified and encrusted. Plaintiff further argues that those deviations proximately caused Plaintiff to develop progressive and worsening hydronephrosis, urinary stasis, infection, urosepsis, septic shock, the need for pressors and ultimately, the loss of his four limbs. Plaintiff also argues that numerous triable issues of fact exist regarding Defendants' failures to timely provide definitive treatment for Plaintiff's left obstructing ureteral calculus and because there are conflicting expert opinions.

Plaintiff argues in substance that the delay in treatment worsened Plaintiff's condition and was a substantial factor in his development of urosepsis, septic shock, the need for pressors and ultimately, the loss of his four limbs. Plaintiff argues that he lost the chance for earlier

treatment to avoid the subsequent complications, multiple surgeries and amputations. Plaintiff also argues that SLRH deviated from accepted medical practice by failing to request a urology consultation on January 20, 2018, failing to admit Plaintiff for definitive treatment for his obstructing ureteral calculus. Plaintiff argues that if medical clearance could not be promptly arranged, then admission would have expedited the process. Plaintiff also argues that SLRH discharged Plaintiff with no treatment other than medications and a Foley catheter. The movants also failed to educate Plaintiff, failed to schedule the medical clearance, failed to follow up with Plaintiff and failed to maintain contact with him, which proximately caused his worsening condition and complications.

Additionally, Plaintiff argues that the movants' expert ignored Plaintiff's denial that he had a procedure scheduled for March 28, 2018 and SLRH failed to provide any evidence to support their claim that they scheduled a procedure to treat Plaintiff's obstructing ureteral calculus on March 28, 2018.

Here, the court finds that Defendants Bortnick, Motola and SLRH established their entitlement to summary judgment in their favor as a matter of law and Plaintiff failed to raise an issue of fact requiring a trial. The court finds that Plaintiff's expert's opinion regarding departures and proximate causation are speculative, conclusory and not sufficiently supported by the evidentiary record to raise a triable issue of fact. Additionally, Plaintiff's expert failed to specifically address and rebut the movants' expert's opinions. Furthermore, Plaintiff's affidavit contradicted material portions of his deposition testimony regarding his treatment and instructions.

Since Plaintiff failed to oppose the portion of the motion pertaining to Dr. Bortnick, the court grants summary judgment in favor of Dr. Bortnick without opposition. As to Dr. Motola

and SLRH, the court agrees with the movants and finds that Plaintiff failed to raise an issue of fact regarding any departures in the movants' care and treatment of Plaintiff and proximate causation. The movants demonstrated that they properly treated Plaintiff for his most pressing conditions and prepared a plan to perform surgery to exchange his stent and remove his large stone, but despite their repeated instructions and referrals with the aid of a Spanish interpreter, Plaintiff failed to obtain the necessary medical clearance from his primary care physician and failed to timely complete the required testing and lab work. Plaintiff sought treatment with other providers. The movants demonstrated that at the time of Plaintiff's treatment at SLRH, there was no need to admit him and conduct an immediate surgery without the necessary clearance and without completion of the tests and lab work.

The court also agrees with the movants and finds that they cannot be held liable for Plaintiff ending his relationship with them and seeking treatment by other urologists at other facilities after March 5, 2018. Plaintiff's most serious symptoms which led to his amputations were not diagnosed until several weeks after Plaintiff was last treated at SLRH and after he was being treated by other urologists. Dr. Plawner's and Total Medical's subsequent treatment plan, which included the procedure on April 12, 2018, to remove the stent without immediately replacing it or removing the stone, was an unforeseeable, superseding event. Therefore, the movants cannot be held liable for Plaintiff's worsening condition and there can be no proximate causation for Plaintiff's injuries and conditions attributable to the movants. Therefore, Plaintiff failed to adequately refute the movants' arguments to create a triable issue of fact as to whether the movants deviated from accepted standards of medical practice or whether their actions or inactions were the proximate cause of Plaintiff's alleged injuries.

Thus, the court grants Defendants Bortnick's, Motola's and SLRH's motion for summary judgment and dismisses Plaintiff's complaint against them.

B. Defendants Hoke's, Davis-Joseph's and NYCHHC's Summary Judgment Motion (Motion Sequence 003)

Defendants Hoke, Davis-Joseph and NYCHHC now move for summary judgment in their favor and for dismissal of Plaintiff's complaint under motion sequence 003. The movants rely on the expert affirmation of David Schulsinger, M.D. and argue in substance that they did not deviate from the accepted standard of care and they were not the proximate cause of Plaintiff's alleged injuries.

The movants argue that Dr. Hoke treated Plaintiff on November 11, 2017 and January 10, 2018. They further argue that Dr. Hoke properly treated Plaintiff's emergent finding of an obstructing calculi by placing a stent and that all subsequent treatment to remove the underlying calculi was elective. However, Plaintiff chose to cease treatment at a NYCHHC facility and instead sought treatment elsewhere. Therefore, they argue in substance that none of their actions or inactions were the proximate cause of Plaintiff's injuries.

The movants further argue that Dr. Davis-Joseph treated Plaintiff on April 3, 2018. They argue in substance that his care was appropriate because Plaintiff's condition was not emergent, as the stent was in good position, there was no active obstruction, and since Plaintiff had an active infection, it would have been a deviation to remove the calculi. Therefore, such procedure remained elective and should not have been performed until the infection was resolved. Additionally, they argue that Plaintiff had not been cleared for surgery as he needed cardiological clearance and several tests. The movants further argue that the stent that Dr. Plawner removed did not show any significant calcification.

They argue that Plaintiff's expert's opinions were speculative, conclusory and failed to refute the movants' expert's opinions. They also argue that Plaintiff's affidavit contradicted his deposition testimony. They further argue in substance that Plaintiff was advised that he could switch his insurance and be treated at the clinic, but Plaintiff chose to be treated by other urologists at Total Medical and SLRH. The movants argue in substance that they provided Plaintiff with proper instructions and that they should not be held responsible for Plaintiff's failure to properly follow up and his decision to seek treatment elsewhere.

Plaintiff opposes the motion and argues in substance that the movants' expert ignored the medical records and deposition testimony. In addition to the alleged deviations set forth above, Plaintiff argues that Dr. Hoke, Davis-Joseph and employees of NYCHHC deviated from accepted medical standards by abandoning Plaintiff and failing to properly arrange for treatment of Plaintiff's obstructing renal calculus. Plaintiff further argues in substance that Plaintiff was discharged with no viable plan and since they knew that the outpatient urology clinic did not accept Plaintiff's insurance, they should have admitted Plaintiff and treated the stone semi-emergently as early as January 10, 2018, and removed the encrusted stent on April 3, 2018. Plaintiff also argues that NYCHHC deviated by failing to implement Dr. Davis-Joseph's recommendations to repeat the potassium level, which was elevated, and to prescribe Bactrim antibiotic. Plaintiff further argues that these deviations were the proximate cause of Plaintiff's worsening condition and were a substantial factor in the development of urosepsis, septic shock, the need for pressors and ultimately, the loss of four limbs. Therefore, Plaintiff argues that he lost the chance for earlier treatment to avoid the complications and multiple surgeries and amputations that followed.

Here, the court finds that the movants demonstrated their entitlement to summary judgment in their favor as a matter of law and that Plaintiff failed to raise a triable issue of fact. For many of the same reasons discussed above, the court finds that Plaintiff's expert's affidavit regarding the movants' alleged deviations and proximate causation are speculative, conclusory and not sufficiently supported by the evidentiary record to raise a triable issue of fact. Additionally, Plaintiff's expert failed to specifically rebut many of the movants' expert's opinions and Plaintiff's affidavit contradicted material portions of his deposition testimony.

Furthermore, the court finds that Plaintiff's expert failed to sufficiently explain that the good and accepted standard of care was for the movants to treat Plaintiff's stone semi-emergently, to admit Plaintiff for immediate surgery when he was being treated at NYCHHC on January 10, 2018 or April 3, 2018, or that the removal of the stent was required on April 3, 2018, based on Plaintiff's condition and the fact that he was being treated by an outside urologist.

Therefore, the court finds that Plaintiff failed to raise a triable issue of fact necessary to defeat this motion. Thus, the court grants summary judgment in favor of Defendants Dr. Hoke, Dr. Davis-Joseph and NYCHHC and dismisses the complaint against these movants.

As such, it is hereby

ORDERED that, as to motion sequence 001, the court grants Defendants Eric Bortnick, M.D.'s, Jay Motola, M.D.'s, and St. Luke's-Roosevelt Hospital Center's s/h/a Mt. Sinai St. Luke's and Mt. Sinai Medical Center, Inc.'s motion for summary judgment, the court dismisses Plaintiff Juan Fernandez' complaint against Defendants Eric Bortnick, M.D., Jay Motola, M.D., Mt. Sinai St. Luke's and Mt. Sinai Medical Center, Inc. and the court directs the Clerk of the Court to enter judgment in favor of Defendants Eric Bortnick, M.D., Jay Motola, M.D. and St.

Luke's-Roosevelt Hospital Center's s/h/a Mt. Sinai St. Luke's and Mt. Sinai Medical Center, Inc.
as against Plaintiff Juan Fernandez, without costs to any party; and it is further

ORDERED that, as to motion sequence 002, the court grants Defendants Gerald Hoke, M.D.'s, Brian Davis-Joseph, M.D.'s and New York City Health & Hospitals Corporation's motion for summary judgment, the court dismisses Plaintiff's complaint against Defendants Gerald Hoke, M.D., Brian Davis-Joseph, M.D. and New York City Health & Hospitals Corporation, and the court directs the Clerk of the Court to enter judgment in favor of Defendants Gerald Hoke, M.D., Brian Davis-Joseph, M.D. and New York City Health & Hospitals Corporation as against Plaintiff Juan Fernandez, without costs to any party; and it is further

ORDERED that the court severs and continues Plaintiffs' claims against Defendants Janusz Plawner, M.D. and Total Medical, P.C.; 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:

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JUAN FERNANDEZ,

Plaintiff,

-against-

JANUSZ PLAWNER, M.D. and TOTAL MEDICAL, P.C.,

Defendants.

-----X
and it is further

ORDERED that counsel for Defendants Gerald Hoke, M.D., Brian Davis-Joseph, M.D. and New York City Health & Hospitals Corporation 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 (www.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 January 19, 2023, at 9:30 a.m. in Part 10, located in room #412 at 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.


20221130175149 ERIKA M. EDWARDS 2E7352BBB45049499542FAB2744E4BDA

<u>11/30/2022</u>			
DATE		ERIKA M. EDWARDS, J.S.C.	
CHECK ONE:	☐	CASE DISPOSED	☒ NON-FINAL DISPOSITION
	☒	GRANTED	☐ GRANTED IN PART
	☐	DENIED	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT
	☐		☐ REFERENCE