

Sineus v Citi Health Home Care Servs., Inc.

2023 NY Slip Op 31998(U)

June 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 521834/2019

Judge: Ellen M. Spodek

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At MMTRP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York, on the 6th day of June, 2023.

PRESENT:

HON. ELLEN M. SPODEK,
Justice

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

Index No.: 521834/2019

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DOROTHY SINEUS (as Administratrix of the Estate of
JOSEPH SINEUS),

DECISION AND ORDER

Plaintiff,

MS #4

-against-

CITI HEALTH HOME CARE SERVICES, INC. AND
MOUNT SINAI BROOKLYN,

Defendants.

Motion and Supporting Papers
Affirmations in Opposition
Reply Affirmation

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Defendant Citi Health and Home Care Services Inc. (hereinafter Citi Health) moves pursuant to CPLR § 3212 for summary judgment and for an order dismissing the plaintiff's complaint and all cross claims with prejudice. Plaintiff opposes.

Factual Background

This case arises out of care provided to decedent, Joseph Sineus by Citi Health between April of 2016, and June of 2017. On April 1, 2016, the decedent, a 78-year-old male with a history of Parkinson's Disease, osteoarthritis and heart disease began receiving home care services from Citi Health 7 days a week for 10 hours a day. *Def. Exhibit E, 2, 5, 23.* On this date, a Care Plan was

implemented which included but was not limited to skin care, meal prep, feeding, changing bed linens, diaper change, skin and nail care, housekeeping, laundry, shopping, bathing, dressing/grooming, mobility/transfer, toileting, feeding and supervision. *Id. at 34*. The Citi Health aide was also directed to call the coordinator immediately for any change in the decedent's condition. *Id. at 7*.

On April 1, 2016, the decedent underwent an initial assessment. He was noted to have unsteady gait, decreased muscle strength, stiffness, poor balance, weakness, decreased coordination and needed assistance with transfers. *Id. at 11, 12*. No problems in the decedent's skin were detected during the assessment. *Id. at 12*. The decedent also underwent a Pressure Ulcer Risk Assessment, and per his score of 13, was noted to be at moderate risk for developing pressure ulcers. *Id.* It was stated that if the patient's score was 15 or below, some of the following measures should be implemented: turning and positioning/frequent position changes when out of bed to chair, measures to prevent increased friction and shear, maintaining clean dry, well lubricated skin, and maintenance of a well-balanced nutritious diet. *Id.*

On this date, the decedent underwent a Nutritional Risk Screening. It was noted that decedent was at moderate nutrition risk. *Id. at 15*. Per the decedent's score of 4, on the Nutrition Risk Screen scale, the Citi Health aide was to instruct the decedent on how to improve eating habits and diet, and to reassess in three months. *Id.* No records from Citi Health exist between April 1, 2016 and September 20, 2016. *Id.*

On September 20, 2016, the decedent was reassessed and the decedent was noted to be alert to place, bedbound, incontinent, and needing total care. *Id. at 2-4, 29*. Per Citi Health's records, care was to be provided by the home health aide and by the decedent's daughter. *Id. at 4*. On this date, Plaintiff expressed concern to Citi Health about getting a new bed for the decedent. *Id.* On this date, the plan of care was to be discussed with the decedent and with the Plaintiff, but the records do not

reflect if the plan of care was discussed. *Id.* On this date, the decedent's skin was noted to be intact. *Id. at 29.* No further Citi Health records exist for the year 2016.

On November 9, 2016, the decedent started to receive services from Your Choice, a Certified Home Health Agency due to the need for wound care. *Def. Exhibit F, 7.* On this date, the decedent was noted to be confined to home and at risk for developing pressure ulcers. *Id. at 9, 14.* He was also noted to require a 1-2 person assist for transferring, noted to be incontinent, and noted to require periodic assessments. *Id. at 12-14.* On this date, the decedent was also noted with a non-healing stage 3 right sacral pressure ulcer measuring 1 x 1 x 0.5 cm and a stage 3 left sacral pressure ulcer measuring 1 x 1 x 0.5 cm. *Id. at 9, 10.* The right sacral pressure ulcer was cleaned with soap and water, patted dry, covered with dry sterile gauze, and secured with paper tape to protect. *Id. at 10.* The decedent was also noted to have pain coming from the wound site. *Id. at 9.*

On November 10, 2016, the decedent was treated by Your Choice again and per the decedent's Braden Scale score of 16, was noted to be once again at risk for the development of pressure ulcers. *Def's Exhibit F, 16.* The Braden Scale is a standard test to assess risk of developing pressure ulcers based on factors such as skin moisture, activity, and mobility. The total scores range from 6-23 with a lower score indicating a higher risk of developing pressure ulcers. On this date, the decedent was noted with a stage 3 right sacral pressure ulcer measuring 1 x 1 x 0.5 cm with serous exudate and a stage 3 left sacral pressure ulcer. *Id. at 17.* The right sacral pressure ulcer was cleaned with soap and water, patted dry, covered with dry sterile gauze, and secured with paper tape to protect it. *Id.* The aide instructed the decedent and his caregiver on how to prepare food in order to follow a low fat and low sodium diet and reminded them to maintain a good intake of vegetables, fruit, protein, minerals, and vitamins to ensure wound healing. *Id.* Your Choice ordered the left sacral pressure ulcer to be cleaned with normal saline, patted dry, and covered with hydrocolloid dressing two times per week and for skilled nursing to be continued. *Id. at 21.* Your Choice was to contact the decedent's physician

to confirm the orders and start wound care and referred the decedent to get a low air loss mattress to help with the healing of the ulcers. *Id. at 17, 21.*

On November 14, 2016, the decedent was noted by Your Choice with a stage 3 pressure ulcer measuring 1 x 1 x 0.5 cm with serous exudate. *Id. at 23.* The wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing and the aide instructed the decedent's caregiver to turn the decedent every two hours to maintain skin integrity. *Id.*

On November 17, 2016, the decedent was noted by Your Choice with a stage 3 sacral ulcer measuring 1 x 1 x 0.5 cm with serous exudate. *Id. 25-26.* The wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing and the aide instructed the decedent's caregiver to turn the decedent every two hours to maintain skin integrity. *Id. at 26.* The decedent was instructed by the aide to take Metoprolol as directed by his primary care physician, taught him to check his pulse daily to avoid severe bradycardia and to report a heartrate of < 60 to a doctor or agency, and to report significant side effects such as difficulty breathing, skin bruising and fever. *Id.* The aide once again instructed the decedent and his caregiver as to how to prepare food in order to follow a low fat and low sodium diet. *Id.*

On November 21, 2016, the decedent was noted by Your Choice with a stage 3 sacral ulcer measuring 1 x 1 x 0.5 cm with serous exudate and the wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing. *Id. at 28-29.* The aide instructed the decedent's caregiver to turn the decedent every two hours to maintain skin integrity and taught the decedent how to follow his medication regime. *Id. at 29.*

On November 24, 2016, the decedent was noted by Your Choice again with a stage 3 sacral ulcer measuring 1 x 1 x 0.5 cm with serous exudate and the wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing. *Id. at 31-32.* The aide instructed the decedent and his caregiver as to how to prepare food in order to follow a low fat and low sodium diet to maintain

nutrition and hydration and instructed the decedent and his caregiver on how to follow the decedent's medication regime. *Id. at 32.*

On November 28, 2016, the decedent was noted by Your Choice with a stage 3 sacral ulcer measuring 1 x 1 x 0.5 cm with serous exudate and the wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing. *Id. at 34-35.* The aide instructed the decedent and his caregiver as to how to prepare food in order to follow a low fat and low sodium diet to maintain nutrition and hydration and instructed the decedent and his caregiver on how to follow the decedent's medication regime. *Id. at 35.* The aide also instructed the decedent's caregiver to turn the decedent every two hours to maintain skin integrity. *Id.*

On December 2, 2016, the decedent was noted by Your Choice with a stage 3 sacral ulcer measuring 1 x 1 x 0.5 cm with serous exudate and the wound was cleaned with normal saline, patted dry, and covered with hydrocolloid dressing. *Id. at 37-38.* The aide instructed the decedent and his caregiver as to how to prepare food in order to follow a low fat and low sodium diet to maintain nutrition and hydration and instructed the decedent and his caregiver on how to follow the decedent's medication regime. *Id. at 38.* The aide also instructed the decedent's caregiver to turn the decedent every two hours to maintain skin integrity. *Id.* It was also noted that coordination with the case manager was needed because the decedent still had a broken hospital bed and no dynamic air mattress had been received which impeded wound healing. *Id. at 39.*

On December 26, 2016, the decedent was officially discharged from Your Choice. *Id. at 40.* Discharge instructions included continuing interventions to prevent pressure ulcers and to continue pressure ulcer treatment based on principles of moist wound healing. *Id. at 43.* Citi Health was still providing care to the decedent 7 days per week during this time, but no records exist from Citi Health until March 31, 2017.

On March 31, 2017, a Registered Nurse (RN) conducted a Paraprofessional Competency/Performance Review of the Citi Health home health aide, Seige Pierre. *Def's Exhibit E*, 9. The aide was to instruct on how to transfer from chair to bed, instruct on how to position the decedent, instruct on oral hygiene, and observe infection control amongst other things. *Id.* The RN marked the aide's performance as satisfactory. *Id.* The RN also noted the aide to be following the plan of care per their Supervision Report. *Id. at 40.*

On April 5, 2017, there is a note from Citi Health stating that the decedent was going to be discharged from Citi Health because the decedent had to be hospitalized. *Id. at 36.* On April 6, 2017, the decedent was admitted to Mount Sinai Beth Israel (MSBI). *Def's Exhibit G*, 433. On admission, he was noted to be lethargic and was complaining of shortness of breath. *Id. at 455, 459.* On admission, the decedent was also noted with a high White Blood Cell count of 16.9 (normal range is 4-11), a low Red Blood Cell count of 4.07 (normal range is 4.7-6.1), a low hemoglobin level of 12.9 (normal range is 14-18), and a high Red cell Distribution Width of 16.9 (normal range is 11.8-14.5). *Def. Exhibit E at 746.* On this date, it was also noted that the decedent was to be turned and positioned every two hours and moisture barrier ointment was to be applied. *Id. at 722.*

On April 7, 2017, the decedent was noted with a stage 2 sacrococcygeal pressure ulcer measuring 0.5 x 0.5 cm. *Id. at 1045.* On April 8, 2017, per the decedent's Braden Scale score of 11, the decedent was noted to be at high risk for the development of pressure ulcers. *Id. at 1042.* On April 15, 2017, the decedent received skin care, was turned and positioned and it was noted that he was responsive to pain. *Id. at 625.* The decedent also underwent nasogastric tube placement. *Id. at 631.*

On April 16, 2017, the decedent was initiated on Dopamine 400 mg. *Id. at 619.* On April 12, 2017 and April 13, 2017, the decedent was administered 650 mg. *Id. at 970, 976.* On April 18, 2017, April 29, 2017, May 3, 2017, and May 9, 2017, the decedent was still noted with a stage 2 sacrococcygeal pressure ulcer. *Id. at 1001, 1009, 1013, 1024.* On April 25, 2017, April 27, 2017,

April 28, 2017, April 30, 2017, May 6, 2017, and May 10, 2017, the decedent was administered acetaminophen 650 mg every four hours. *Id. at 916, 976.*

On May 11, 2017, the decedent was still noted to be lethargic but responsive to tactile stimuli. *Id. at 488.* The decedent was turned and positioned. *Id. 33.* On May 12, 2017, the decedent underwent a PEG tube placement. *Id. at 489.* On May 14, 2017, the decedent was noted to have a fever secondary to an infection. *Id. at 650.* He was administered Dopamine 400 mg and acetaminophen 650 mg every six hours. *Id. at 694, 858.* He was also diagnosed with sepsis. *Id. at 606.*

On May 15, 2017, the decedent was noted with a stage 2 sacrococcygeal pressure ulcer measuring 1.5 x 1.5 cm with serous exudate, a stage 2 left ear pressure ulcer measuring 0.5 cm x 0.3 cm with serous exudate and bilateral knees deep tissue injuries. *Id. at 681, 985, 987.* On this date, he was seen by a wound care nurse, the wounds were dressed, and the decedent was to continue on antibiotics and dopamine. *Id. at 681.*

On May 17, 2017, the decedent was noted with a stage 2 sacrococcygeal pressure ulcer measuring 2 x 2 cm with serous exudate, a stage 2 left ear pressure ulcer measuring 4 x 4 cm with serous exudate, an unstageable right lateral knee pressure ulcer measuring 3 x 2 x 0 cm with black eschar, an unstageable thoracic ulcer measuring 3 x 2 cm with black eschar, and a right outer ankle deep tissue injury measuring 1 x 1 cm. *Id. at 977, 978, 979.* He was also administered acetaminophen 650 mg. *Id. at 858.*

On May 27, 2017, the decedent was diagnosed with anemia and underwent a blood transfusion. *Id. at 437.* He was also administered acetaminophen 650 mg. *Id. at 794.* On May 28, 2017, the decedent was noted with a stage 2 sacrococcygeal pressure ulcer, a stage 2 left ear pressure ulcer, an unstageable thoracic ulcer, and a right outer ankle deep tissue injury. *Id. at 945.*

On June 2, 2017, the decedent was noted to be unresponsive and discharged to hospice. *Id. at 780, 2,665.* On this date he was noted with severe protein calorie malnutrition, fever, and septic shock,

and was noted to need a tracheostomy. *Id.* at 2,666. On June 9, 2017, IV cefepime was started for presumed sepsis. *Id.* at 2,656. On June 11, 2017, the decedent was noted with an unstageable left outer ankle pressure ulcer, a stage 4 lumbar pressure ulcer, a stage 3 sacrococcygeal pressure ulcer, a stage 2 right ear pressure ulcer, and a stage 2 left ear pressure ulcer. *Id.* at 2,585, 2,586. On June 12, 2017, the decedent went into cardiac arrest and died. *Id.* at 2,649.

Discussion

On a motion for summary judgment dismissing a medical malpractice cause of action, a defendant has the prima facie burden of establishing that there was no departure from good and accepted medical practice, or, if there was a departure, the departure was not the proximate cause of the alleged injuries. *Brinkley v. Nassau Health Care Corp.*, 120 A.D.3d 1287 (2d Dept. 2014); *Stukas v Streiter*, 83 AD3d 18, 24-26 (2d Dept. 2011).

Once the defendant has made such a showing, the burden shifts to the plaintiff to submit evidentiary facts or materials to rebut the prima facie showing made by the defendant, so as to demonstrate the existence of a triable issue of fact. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Brinkley v. Nassau Health Care Corp.*, supra; *Fritz v. Burman*, 107 A.D.3d 936, 940 (2d Dept. 2013); *Lingfei Sun v. City of New York*, 99 AD3d 673, 675 (2d Dept. 2012); *Bezerman v. Bailine*, 95 AD3d 1153, 1154 (2d Dept. 2012); *Stukas v. Streiter*, at 24. A plaintiff succeeds in a medical malpractice action by showing that a defendant deviated from accepted standards of medical practice and that this deviation proximately caused plaintiff's injury. *Contreras v Adeyemi*, 102 AD3d 720, 721 (2d Dept. 2013); *Gillespie v New York Hosp. Queens*, 96 A.D.3d 901, 902 (2d Dept. 2012); *Semel v Guzman*, 84 AD3d 1054, 1055-56 (2d Dept. 2011). The plaintiff opposing a defendant physician's motion for summary judgment must only submit evidentiary facts or materials to rebut the defendant's prima facie showing. *Stukas*, at 24.

In support of its motion, Defendant Citi Health has submitted the affirmation of Dr. Lawrence N. Diamond, a physician licensed to practice medicine in the State of New York who specialized in Geriatric Medicine. Dr. Diamond is board certified by the American Board of Family Practice. Citi Health also included the affirmation of Dr. Fanell Alerte, Founder, President, and Chief Executive Officer of Citi Health. In support of its opposition, Plaintiff submitted an affirmation of an expert doctor, also licensed to practice medicine in the State of New York. Plaintiff's expert is Board Certified in Internal Medicine and Geriatric Medicine.

Defendant's expert opines that the care rendered by Citi Health at all times relevant to this action was appropriate and in accordance with the standard of care. He further asserts that none of the care rendered by Citi Health proximately caused Mr. Sineus's deterioration and ultimate death. Defendant's expert states that Citi Health's care plan was followed appropriately and that the necessary steps were taken to avoid development of pressure ulcers. He states that during the 10 hours per day that Citi Health was attending to Mr. Sineus, the aide turned and positioned him every two hours, or five times per day, in accordance with generally accepted standards of practice. *Def. Exhibit L at 39*. He also states that the decedent was given a low-pressure air mattress to prevent deterioration of his skin. *Id.* He states that the decedent did develop "one small decubitus ulcer," which was discovered in late October 2016, but that this ulcer had healed fully by the time Mr. Simeus was admitted to MSBI in April 2017 *Id. at 37, 38*. He states that therefore, nothing the Citi Health aides did or did not do caused Mr. Sineus to develop pressure ulcers.

Defendant's expert also opines that there was no evidence that Mr. Sineus was becoming malnourished while Citi Health was caring for him. He states that all of Mr. Sineus's meals were prepared by his family, and that he was receiving food stamps during the year that Citi Health cared for him. *Id. at 46*. Defendant's expert states that Citi Health was only responsible for assisting the decedent in eating his meals. *Id.* He further opines that Mr. Sineus was not malnourished when he

presented to MSBI in April of 2017, and that his malnourishment developed in the hospital. *Id.* He opines that therefore, Citi Health's care and treatment of Mr. Sineus could not have caused him to become malnourished.

Defendant's expert further states that Citi Health did not depart from accepted standards of medical practice by failing to notify the coordinator of Mr. Sineus's deteriorating health, because there was no change in his condition. *Id. At 39.* He substantiates this by pointing out that a note created by Citi Health one week before the decedent was hospitalized did not note any change in his condition. *Id at 41.*

Plaintiff's expert disputes each element of Defendant's expert's analysis with respect to Citi Health's care and treatment of Mr. Sineus's skin. He/she states that even though Mr. Sineus's Care Plan directs that he needed to be turned and positioned every two hours, there is nothing in Citi Health's records to show that this was ever done. *Pltf. Exhibit 1 48-50.* Plaintiff's expert states that in his/her opinion, Mr. Sineus was not being turned and positioned by Citi Health staff at any time, because their records do not reflect that he was being turned/positioned.

Plaintiff's expert additionally claims that Mr. Sineus was never given an air mattress despite one being recommended in his Care Plan. In Your Choice's records from November of 2016, it was noted that Mr. Sineus needed a low air loss mattress to help with healing his ulcer. *Id at 14.* Your Choice's records on December 2, 2016, reference the fact that no such air mattress was ever received, and Mr. Sineus was sleeping on a "broken hospital bed". *Id at 56.* Plaintiff's expert further points out that nothing in Citi Health's records refer to an air mattress being implemented at any time. *Id at 55.*

As to Mr. Sineus's nutrition, Plaintiff's expert opines that Citi Health departed from good and accepted standards of practice by failing to accurately assess the decedent's nutrition and hydration risk or instructing him on how to improve his eating habits, despite the fact that these measures were called for in the Care Plan. *Id. at 59.* He/she disputes Defendant's expert's claim that Mr. Sineus was

not malnourished when he presented to MSBI on April 6, 2017, by pointing to the fact that Mr. Sineus had an elevated WBC of 16.9, a low RBC of 4.07, a low HGB count of 12.9, and a high RDW count of 16.9. *Def's Exhibit E at 746.*

Plaintiff's expert further states that Citi Health departed from good and accepted standards by failing to notify the care coordinator of changes to Mr. Sineus's condition. Plaintiff's expert states that despite Defendant's expert's contention that there were no changes to Mr. Sineus's health during the year that Citi Health was treating him, he did develop a stage 3 pressure ulcer as noted in Your Choice's records from November 9, 2016. There is no record that Citi Health ever reported this ulcer to the coordinator or that any steps were taken to treat it. *Pltf. Exhibit 1 at 63.*

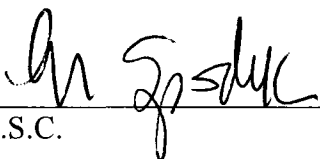
Here, the conflicting testimony of the two experts creates issues of fact. "Summary judgment may not be awarded in a medical malpractice action where the parties adduce conflicting opinions of medical experts." *McKenzie v. Clarke*, 77 A.D.3d 637, 638 (2d Dept. 2010); *see Adjetey v. New York City Health & Hosps. Corp.*, 63 A.D.3d 865 (2d Dept. 2009). There is a clear factual dispute as to several elements of the care rendered by Citi Health in this case. The records maintained by Citi Health do not reflect that their aides were consistently turning and positioning Mr. Sineus every two hours, as was required by the Care Plan and by good and accepted standards of practice. It is further disputed that Mr. Sineus ever received an air mattress to aid in the healing of his pressure ulcer. At oral argument, Defendant contended that the fact that Citi Health's records show that they recommended an air mattress for Mr. Sineus is sufficient to show that they provided him with one. However, the records maintained by Your Choice indicate that weeks after the air mattress was recommended, Mr. Sineus was still sleeping on a broken hospital bed, and Citi Health's records do not mention an air mattress after the initial recommendation.

There is additional conflict when it comes to Citi Health's oversight of Mr. Sineus's nutrition. Defendant's expert claims that the decedent's family was preparing all his meals, and that he had

consistent access to nutrition because he was on food stamps. However, his own affirmation states that Citi Health was responsible for shopping for the decedent, and Citi Health's care plan includes Nutrition Risk Screenings and instructing Mr. Sineus on improving his diet. It is not clear however that Citi Health aides ever instructed Mr. Sineus or his family on improving his diet, and his blood work upon admission to MSBI is suggestive of malnutrition.

Given the various issues of fact created by the conflicting expert testimony herein, Defendant Citi Health's motion is denied. This constitutes the decision and order of the court.

ENTER:



J.S.C.

Honorable Ellen M. Spodok

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KINGS COUNTY CLERK
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