

**Azmy v Watkins**

2023 NY Slip Op 34486(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 805026/2017

Judge: Kathy J. King

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. KATHY J. KING PART 06**

*Justice*

-----X

MICHAEL S. AZMY and TAMER S. AZMY,  
Plaintiffs,

**INDEX NO.** 805026/2017

**MOTION DATE** 03/07/2023

**MOTION SEQ. NO.** 002

- v -

ANTHONY WATKINS, M.D., DAVID KLEIMAN, M.D.,  
SANDIP KAPUR, M.D. and THE NEW YORK  
PRESBYTERIAN HOSPITAL,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77

were read on this motion to/for DISMISSAL.

Defendants Anthony Watkins, M.D., David Kleiman, M.D., Sandip Kapur, M.D., and The New York and Presbyterian Hospital s/h/a The New York Presbyterian Hospital (“NYPH”) (collectively, “defendants”) move for the following relief: (a) pursuant to CPLR § 3212 granting summary judgment and dismissal of all the causes of action against the defendants, as a matter of law; (b) directing entry of judgment with prejudice in favor of defendants; (c) deleting the name of the defendants from the caption; (d) pursuant to CPLR § 3212 (e) and (g), granting partial summary judgment as to the defendants as to any claim and/or theory of liability as to which the Court finds that plaintiff Tamer S. Azmy (“Tamer”) has failed to raise an issue of fact.<sup>1</sup>

Plaintiff opposes the defendants’ motion and cross-moves, pursuant to CPLR § 3025, to amend the complaint to add a cause of action for lack of informed consent and to amend the bill

<sup>1</sup> Plaintiff Michael S. Azmy has discontinued his claims against all defendants. All references to “plaintiff” herein refer to Tamer S. Azmy.

of particulars to allege a claim for improper and defective equipment, and violation of Public Health Law § 2805-1. Defendants oppose plaintiff's cross-motion.

### **BACKGROUND**

Plaintiff brings this action for medical malpractice against defendants regarding the care and treatment he received for a donor nephrectomy performed by defendants Anthony Watkins, M.D. ("Dr. Watkins") and David Kleiman, M.D. ("Dr. Kleiman") at NYPH on February 12, 2015. The nephrectomy was performed on plaintiff for the purpose of donating his kidney to his brother, Michael Azmy. It is undisputed that in the course of performing the nephrectomy, Tamer's renal artery bled after a surgical GIA Stapler malfunctioned. The complication was recognized immediately and properly controlled, and the artery was repaired. Plaintiff contends that the defendants were negligent because there was an arterial injury during the procedure, and the laparoscopic procedure had to be converted to an open procedure, resulting in scarring.

Plaintiff presented to Dr. Watkins on February 3, 2015 to be evaluated as a candidate to donate a kidney to his brother. A physical examination and a chest x-ray were normal. A CT angiogram revealed two renal arteries connected to the left kidney. Blood and urine tests were ordered. The records indicate that Dr. Watkins spent 45 minutes with plaintiff, and that he and plaintiff spent more than half that time discussing the risks associated with a kidney donation, including but not limited to post-operative pneumonia, blood clots in the lungs or legs, bowel obstruction, a 1-3:1000 risk of end-stage renal disease, and a 1:3000 risk of intraoperative mortality. It was determined that plaintiff was a suitable donor. Plaintiff executed a preoperative consent form giving his authorization and consent for a "donor nephrectomy possible laparoscopic possible open [procedure]", confirming that Dr. Watkins had explained the risks and dangers associated with surgery and medical procedures, which could cause adverse

consequences not ordinarily anticipated in advance. Plaintiff was scheduled for a single incision laparoscopic live donor left nephrectomy for February 12, 2015.

According to Dr. Watkins' operative report, a single 5-centimeter periumbilical incision was made followed by the placement of a gel port with trocars. The kidney was separated from surrounding tissue and the ureter divided distally with an Endo-GIA stapler. Dr. Watkins then used the Endo-GIA stapler to divide the two renal arteries at their origin. When Dr. Watkins opened the stapler, "there was profuse bleeding emanating from the aorta". Dr. Watkins noted that the "smaller renal artery appeared to have avulsed without any evidence of a staple line." Dr. Watkins used the stapler to provide compression and temporary control, and sought assistance from Dr. Del Pizzo, a urologist. Dr. Watkins determined that removal of the kidney "with hand-assist ... was proven to be challenging due to the nature of the injury, which appeared to be an avulsed renal artery," and converted the laparoscopic procedure into an open surgical procedure. The kidney was removed and control over the aortic bleeder was obtained. Dr. Meltzer, a vascular surgeon, was called in to assist. Dr. Meltzer's operative report reads, in part, that "[e]xploration by Dr. Watkins had revealed evidence of an avulsion injury from the left renal artery off the aorta." Dr. Meltzer repaired the injury to the renal artery using sutures, and noted that approximately one liter of blood had been lost.

On February 20, 2015, while plaintiff was medically cleared for discharge, he wanted to remain at NYPH until Michael was discharged. On February 25, 2015, plaintiff was informed that he was medically ready to be discharged but appealed the decision. The appeal was denied on February 27, 2015, and plaintiff was discharged from NYPH.

Thereafter, plaintiff commenced the underlying action sounding in medical malpractice. The bill of particulars alleges, inter alia, that Dr. Watkins and Dr. Kleiman were negligent and

departed from standards of good and accepted medical and surgical practice by causing, among other things, an iatrogenic aortic injury, injury to the renal artery and aortic bleeder, which resulted in extensive blood loss of approximately one liter, conversion of the laparoscopic nephrectomy into an open surgery; prolonged hospitalization and resultant scarring, disfigurement and deformity, among other injuries. Plaintiff's bill of particulars further alleges that Dr. Watkins and Dr. Kleiman carelessly and negligently handled, utilized and manipulated surgical instruments, specifically the Endo-GIA stapler used to divide the arterial supply, failing to prevent and/or promptly, timely, urgently and appropriately detect the iatrogenic aortic injury. Plaintiff alleges that NYPH was negligent in the ownership, operation, management, maintenance, supervision and control of the hospital; in failing to promulgate and follow appropriate rules, regulations, guidelines, procedures, by-laws, policies or protocols; and in failing to properly hire/credential, retain and train its staff and physicians.

Plaintiff's bill of particulars further asserts a claim that defendants failed to fully inform plaintiff of the risks, known perils, and possible complications of the procedure, which defendants seek to strike, and also asserts the doctrine of *res ipsa loquitur*.

Plaintiff cross-moves to amend the complaint to add a cause of action for lack of informed consent. Plaintiff also seeks to amend the bill of particulars to allege improper and defective equipment and a violation of Public Health Law § 2085-l, and submits a proposed amended complaint and a proposed amended verified bill of particulars in support of his cross-motion.

## **DISCUSSION**

### **Defendants' Motion for Summary Judgment**

Defendants move for summary judgment regarding plaintiff's claims arising from

medical malpractice, including those contained in the bill of particulars, including res ipsa loquitur and negligent supervision and staffing as to defendant NYPH. Additionally, defendants seek to strike plaintiff's claims for lack of informed consent, which is contained in its bill of particulars.

It is well settled that a party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324). The moving party's "[f]ailure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers".

"In a medical malpractice action, plaintiff must show, through a medical expert, both a deviation from accepted standards of medical care and that the treatment rendered by the moving defendant was a proximate cause of plaintiff's injuries [*see e.g., Kaffka v New York Hosp.*, 89 NY2d 913 [1996]; *Ferrara v South Shore Orthopedic Assoc.*, 178 AD2d 364 [1<sup>st</sup> Dept 1991]]. In the absence of evidence that defendant's conduct was a proximate cause of plaintiff's injury, summary judgment must be granted to defendant as a matter of law.

As a threshold matter, defendants' motion, insofar as it seeks summary judgment dismissing the complaint against Dr. Kapur, is denied as moot since the parties by stipulation agreed to discontinue the action against Dr. Kapur as a defendant.

Submitted in support of defendants' motion are the pleadings, deposition transcripts, certified medical records from NYPH, and an affirmation from Matthew Cooper, M.D. (Dr. Cooper), a board-certified Surgeon, who is currently the Director of Kidney and Pancreas Transplantation at the Georgetown Transplant Institute and a Professor of Surgery at the medical school. Dr. Cooper opines that a full complete history was taken of plaintiff and that the information was properly appreciated and documented. Further, he opines that Dr. Watkins obtained the proper medical clearances prior to the procedure, which included a renal and CT scan, and there were no complaints or physical symptoms that precluded Tamer Azmy from donating his kidney. Dr. Cooper opines that deposition testimony and the operative report show that the endoscopic stapler did not function properly, which led to an injury of the renal artery. However, Dr. Cooper stated that injury to surrounding vessels and bleeding are a known risk of laparoscopic surgery, and that transection of a renal artery is a known complication that can occur in the absence of negligence, as is the case here. In this regard, Dr. Cooper's opinion is consistent with the testimony of Dr. Kleiman, who assisted Dr. Watkins with the surgery. Dr. Kleiman testified that the stapler had completely sealed the larger of the two renal arteries, but the smaller artery was not sealed, and he further explained that for an "avulsion to have happened, there would have had to be some force pulled in any direction, or movement of the stapler itself". Dr. Kleiman recalled that Dr. Watkins "fired the stapler without any difficulty, without anything abnormal, and then immediately opening the stapler there was brisk bleeding noted from the smaller of the two arteries." Dr. Kleiman testified, "my recollection was that the stapler did not move at all. As Dr. Watkins fired it, it stayed stationary, as it's supposed to. An avulsion would have looked like a jerking of the stapler or a pulling while it was being cut, and that was not seen."

Here, Dr. Cooper opines that the procedure was performed properly, and that there is no evidence that Dr. Watkins was negligent in the manner in which he performed the nephrectomy, despite the bleeding from the artery.

Contrary to plaintiff's contentions, Dr. Cooper opines that defendants exceeded the standard of care in treating the injury to the renal artery. He notes that defendants immediately recognized the bleed and promptly undertook action by seeking out Dr. Del Pizzo for assistance before converting the laparoscopic procedure to an open surgical procedure, and by calling on Dr. Meltzer for further assistance resulting in the placement of sutures on the aorta to gain control of the bleed. He further opines that it is not negligence on the part of the surgeon or hospital if equipment malfunctions, and that no physician could have prevented the endoscopic stapler from failing to properly apply a seal. It is well settled that the mere fact that a patient sustains an injury is not evidence of a departure from accepted medical practice (*see Johnson v St. Barnabas Hosp.*, 52 AD3d 286 [1st Dept 2008]). Thus, a patient who experiences a known complication of a surgical procedure, without more, does not have a viable medical malpractice claim (*see Pancila v Romanzi*, 140 AD3d 516 [1st Dept 2016]).

As to plaintiff's claims regarding the failure to ensure or call in competent, skilled, trained, experienced, and capable physicians and hospital personnel for the treatment, Dr. Cooper opines that the medical records demonstrate that all of the physicians and specialties needed in the treatment of plaintiff were provided. In this regard, Dr. Cooper also opines that there is no evidence in the record to support plaintiff's vague claims that defendants failed to provide sterile equipment, facilities and conditions and failed to properly document, obtain or appreciate his medical history. Additionally, Dr. Cooper's expert affirmation also establishes as a matter of law that defendants' post-operative treatment met the standard of care, and that plaintiff's

hospitalization was within normal standards, as he finds that plaintiff's prolonged hospitalization is based on plaintiff's desire to stay at NYPH until Michael was discharged, as set forth in the records.

Based on the expert affirmation of Dr. Cooper, the Court finds that the care and treatment provided by defendants to plaintiff was within the standard of care, and that plaintiff's injury was a known complication of the surgery which could occur in the absence of negligence, and that defendants therefore established prima facie entitlement to summary judgment as a matter of law (*Einach v Lenox Hill Hosp.*, 160 AD3d 443 [1st Dept 2018]).

To rebut the defendants' prima facie showing, the plaintiff must tender medical evidence demonstrating that the defendant departed from accepted medical practice, and that such departure was a proximate cause of the injuries (*Anyie B. v Bronx Lebanon Hosp.*, 128 AD3d 1, [1st Dept 2015]).

The burden having shifted, plaintiff in opposition proffers an expert affirmation from an unnamed board-certified urologist experienced in evaluating, treating and performing live donor nephrectomies, who reviewed the medical records, deposition transcripts, a notice of discovery and inspection dated October 31, 2018, defendants' response dated May 21, 2019, and Dr. Cooper's affirmation. The expert opines, with a reasonable degree of medical certainty, that Dr. Watkins deviated from the standard of care by negligently handling and manipulating the Endo-GIA stapler to divide the arterial supply during the nephrectomy, resulting in an avulsion injury to the renal artery with profuse bleeding from the aorta. The expert further opines that an avulsion injury, as described in the operative reports of Dr. Watkins and Dr. Meltzer and as commonly understood among physicians, comports with tearing or ripping of the aorta from the root, rather than a clean cut from transection.

With respect to the alleged stapler malfunction, the expert further opines that even if there was a malfunction, the injury was caused by negligence either in the technique used in applying the stapler, or by aggressively retracting the stapler, without first ensuring that a ligated transection was made. According to plaintiff's expert, neither of the two operative reports mention a stapler malfunction, and only describe an avulsion injury. Consistent with this finding, plaintiff's expert opines that Dr. Watkins' negligence in failing to appropriately handle and manipulate the stapler, caused the avulsion injury and substantial blood loss, and was a substantial factor in requiring the conversion of the procedure from a laparoscopic approach to an open surgery. This more invasive procedure caused plaintiff to sustain a much larger incision and scar, significant blood loss, and a longer hospitalization and recovery period.

The Court finds that the opinion of plaintiff's expert directly contravenes the opinion of defendant's expert, thereby creating a triable issue of fact. "Summary judgment is not appropriate ... [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; see *Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

The Court notes that plaintiff does not oppose dismissal of the claims against Dr. Kleiman, and also does not oppose that prong of the motion seeking to strike all claims related to Michael's damages from the bills of particulars, and withdraws the following claims: "devastating injury to donor kidney due to 75 minutes warm ischemia time and reperfusion injury"; "severely damaged and compromised donated kidney for only matching living related donation to his brother"; "delayed function of plaintiff's donated kidney"; and "progressive

failure of plaintiff's donated kidney transplanted in his brother" (*id.*). Therefore, these claims are dismissed.

Additionally, plaintiff does not oppose dismissal of plaintiff's negligent credentialing, hiring, and supervision claims against NYPH, and dismissal of any claim based on the doctrine of *res ipsa loquitur*. Defendants have met their prima facie burden sufficient to demonstrate entitlement to summary judgment on these claims, thus, warranting dismissal. "The theory of *res ipsa loquitur* is applied to occurrences [w]here the actual or specific cause of an accident is unknown," which is not applicable to the instant case (*James v Wormuth*, 21 NY3d 540 [2013] [internal quotation marks omitted]). Further, plaintiff's claim of negligent credentialing, hiring and supervision is not plead as a separate and distinct cause of action, and is duplicative of plaintiff's medical malpractice claim (*Nouel v 325 Wadsworth Realty LLC*, 112 AD3d 493 [1<sup>st</sup> Dept 2013]). In addition, there is no evidence that the staff was not qualified to render medical treatment or that any staff was improperly supervised.

Since the claims as to defendants Dr. Kleiman and NYPH are dismissed, and the claims of Michael S. Azmy have been discontinued, defendants' requested relief regarding deleting the names of these parties from the caption is granted.

That branch of defendants' motion seeking to strike plaintiff's claim for lack of informed consent from the bill of particulars shall be considered in the Court's discussion on plaintiff's cross-motion to amend the complaint.

### **Plaintiff's Cross-Motion to Amend**

"Leave to amend pleadings, including a bill of particulars, is to be freely given, absent prejudice or surprise" (*Garguilo v Port Auth. of N.Y. & N.J.*, 137 AD3d 708, 708 [1st Dept 2016], *lv denied* 28 NY3d 905 [2016] [internal quotation marks and citation omitted]). "The

movant need not establish the merit of [the] proposed new allegations, but only that ‘the proffered amendment is not palpably insufficient or clearly devoid of merit’” (*Fairpoint Cos., LLC v Vella*, 134 AD3d 645, 645 [1st Dept 2015] [citation omitted]). The party opposing the motion bears the burden of demonstrating prejudice (*M.A. Angeliades, Inc. v Hill Intl., Inc.*, 150 AD3d 607, 608 [1st Dept 2017]). “To establish prejudice, which must be significant, there must be some indication that the opposing party will have been hindered in the preparation of its case or prevented from taking some measure to support its position” (*Lindo v Brett*, 149 AD3d 459, 463 [1st Dept 2017] [internal quotation marks and citation omitted]). Leave to amend may also be denied when the opposing party “demonstrate[s] that the facts alleged and relied upon in the moving papers are obviously unreliable or insufficient to support the amendment” (*Peach Parking Corp. v 346 W. 40th St., LLC*, 42 AD3d 82, 86 [1st Dept 2007]).

As to plaintiff’s lack of informed consent claim, CPLR § 214-a imposes a 2-1/2 year statute of limitations on a claim for lack of informed consent (*see Ford v Lee*, 203 AD3d 456, 457 [1st Dept 2022]). Here, plaintiff sought leave to amend more than three years after commencing the action. CPLR § 203(f), however, provides that a claim in an amended pleading relates back to the time of the original pleading, unless the original pleading fails to give notice of the transactions and occurrences to be proven in the amended pleading.

To demonstrate a lack of informed consent, the plaintiff is required to establish that (1) the defendant failed to disclose the material risks, benefits, and alternatives to the surgery which a reasonable medical practitioner under similar circumstances would have disclosed, in a manner permitting the plaintiff to make a knowledgeable evaluation, and (2) a reasonably prudent person in the plaintiff’s position would not have undergone the surgery if he or she had been fully

informed (*see* Public Health Law § 2805–d[1], [3]; *Sarwan v Portnoy*, 51 AD3d 655, 656–657 [2d Dept 2008]; *Davis v. Nassau Ophthalmic Servs.*, 232 AD2d 358 [2d Dept 1996]).

Here, the bill of particulars contains allegations that defendants failed to obtain plaintiff's informed consent, and failed to fully him inform of the risks associated with the procedure, which relate back to the original pleading, in conformance with CPLR § 203(f). Thus, the proposed amendment falls within the statute of limitations. Additionally, defendants were provided with notice of these allegations since plaintiff was questioned at his deposition about the preoperative consent form, and whether Dr. Watkins and others discussed with him the risks associated with the procedure. Notably, defendants addressed this unpled cause of action in their motion for summary judgment. Thus, defendants have not demonstrated either prejudice or surprise related to the proposed amendment (*see Grosse v Friedman* (118 AD2d 539 [2d Dept 1986] [affirming the trial court's decision permitting amendment of the complaint to add a cause of action for lack of informed consent because the original bill of particulars clearly alleged facts sufficient to support a lack of informed consent claim, and put defendant on notice that such a claim was contemplated in the original complaint])).

The allegations in the proposed amended complaint, as supplemented by plaintiff's expert affirmation, are sufficient to plead a cause of action for lack of informed consent.

Defendants, in opposition, have not shown that the facts alleged and relied upon in plaintiff's papers are unreliable or insufficient to overcome the presumption of the validity of the amendment (*see JPMorgan Chase Bank, N.A. v Low Cost Bearings NY Inc.*, 107 AD3d 643, 644 [1st Dept 2013]).

In light of the Court's grant of plaintiff's cross-motion seeking to amend the complaint to add a cause of action for lack of informed consent, that branch of defendants' motion seeking to

dismiss that claim is denied as moot. Accordingly, the cross-motion insofar as it seeks leave to amend the complaint to plead a cause of action for lack of informed consent is granted.

As to plaintiff's request to amend the bill of particulars to plead a claim for Public Health Law § 2805-1, the statute requires hospitals to report certain "adverse events" to the Department of Health, including "equipment malfunction during treatment or diagnosis of a patient which did or could have adversely affected a patient or hospital personnel" (Public Health Law § 2805-1 [1] and 2 [c]). Here, plaintiff has demonstrated that the amendment has merit (*see Bagan v Tomer*, 139 AD3d 577, 577 [1st Dept 2016] [no prejudice or surprise where the medical records and the defendant's expert raised the issue]), since Dr. Watkins testified that the stapler had misfired, and that it was common for stapling devices to "mal fire" by failing to lay a staple line, which is what occurred in this case. Plaintiff alleges that defendants should have reported the stapler malfunction given their knowledge that Endo-GIA staplers frequently malfunction.

Accordingly, the cross-motion, insofar as it seeks leave to amend the bill of particulars to allege improper and defective equipment and a violation of Public Health Law § 2805-1, is granted. Defendants, however, are entitled to conduct discovery of these new allegations.

The note of issue is hereby vacated to give defendants the opportunity to conduct discovery on the new allegations of improper and defective equipment and a Public Health Law § 2805-1 violation. Within 90 days after the filing of a new note of issue, upon completion of all necessary discovery related to these additional allegations, defendants may renew their motion for summary judgment on these limited issues (*Bagan*, 139 AD3d at 577), and may submit an expert opinion addressing these issues (*see Mirabella v Mount Sinai Hosp.*, 43 AD3d 751, 752 [1st Dept 2007] [denying summary judgment where, in light of the plaintiff's allegations about the use of defective surgical equipment, the defendants' expert failed to discuss "the

responsibility of either defendant hospital or defendant surgeon to ensure against the possibility of stapler misfirings”]).

Based on the foregoing, it is hereby

**ORDERED**, that the motion of defendants Anthony Watkins, M.D., David Kleiman, M.D., Sandip Kapur, M.D., and The New York and Presbyterian Hospital s/h/a The New York Presbyterian Hospital (NYPH) to dismiss the complaint of plaintiff Tamer S. Azmy is granted to the extent of:

- (1) dismissing the complaint against defendant David Kleiman, M.D.;
- (2) dismissing the claim that defendant The New York and Presbyterian Hospital s/h/a The New York Presbyterian Hospital was negligent in the credentialing, hiring, supervision and staffing of its employees;
- (3) dismissing any claim based on the doctrine of res ipsa loquitur; and
- (4) striking all claims related to plaintiff Michael S. Azmy’s damages from plaintiff Tamer S. Azmy’s bill of particulars; and it is further

**ORDERED**, that the prong of defendants’ motion seeking summary judgment and dismissal of the complaint against defendant Sandip Kapur, M.D. is denied as moot; and it is further

**ORDERED**, that in all other respects defendants’ motion for summary judgment is denied; and it is further

**ORDERED**, that the Clerk of the Court shall enter judgment in favor of defendant David Kleiman, M.D., dismissing the claims made against said defendant in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

**ORDERED**, that the caption be amended to reflect the removal of Michael S. Azmy, Dr. Kleiman, and Dr. Kapur as parties to this action; and it is further

**ORDERED**, that all future papers filed with the Court bear the amended caption; and it is further

**ORDERED**, that the amended caption shall read as follows:

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

-----X  
TAMER S. AZMY,

Index No. 805026/2017

Plaintiff,

- against -

ANTHONY WATKINS, M.D. and THE NEW YORK  
PRESBYTERIAN HOSPITAL,

Defendants.  
-----X

and it is further

**ORDERED**, that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

**ORDERED**, that the cross-motion of plaintiff Tamer S. Azmy to amend the complaint to plead a cause of action for lack of informed consent and to amend the bill of particulars to plead an allegation of improper and defective equipment and to plead a violation of Public Health Law § 2805-1 is granted, and the proposed amended verified complaint and the proposed amended verified bills of particulars as annexed to the cross-moving papers as exhibits 1 and 2 (NSYCEF Doc No. 69) shall be deemed served upon service of a copy of this order with notice of entry; and it is further

**ORDERED**, that the defendants shall answer the amended complaint within 20 days from the date of said service; and it is further

**ORDERED**, that the note of issue is hereby vacated and the case is stricken from the trial calendar; and it is further

**ORDERED**, that all further discovery in this matter on the limited issues of improper and defective equipment and a violation of Public Health Law § 2805-1 shall be completed within 60 days from service of a copy of this order with notice of entry; and it is further

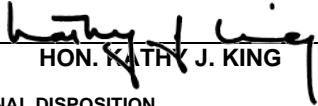
**ORDERED**, that counsel shall appear for a status conference on April 4, 2024, at 10:00 a.m., at 60 Centre Street, Room 351; and it is further

**ORDERED**, that within 15 days from the entry of this order, plaintiff shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the Court; and it is further

**ORDERED**, that within 15 days from completion of discovery as hereinabove directed, plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and certificate of readiness (for which no fee shall be imposed), to which shall be attached a copy of this order; and it is further

**ORDERED**, that defendants Anthony Watkins, M.D. and The New York and Presbyterian Hospital s/h/a The New York Presbyterian Hospital may renew their motion for summary judgment on the limited issues of improper and defective equipment and a violation of Public Health Law § 2805-1 within 90 days after plaintiff Tamer S. Azmy files a new note of issue and certificate of readiness; and it is further

**ORDERED**, that service upon the Clerk of the Court and 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](http://www.nycourts.gov/supctmanh))).

<u>12/20/23</u> DATE		 HON. KATHY J. KING
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE