

Medurga v Mehta

2023 NY Slip Op 34827(U)

December 19, 2023

Supreme Court, Kings County

Docket Number: Index No. 518121/2017

Judge: Consuelo Mallafre Melendez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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THOMAS E MEDURGA, as Administrator of The Estate
of HAYWARD ALLEN, deceased,

Plaintiff,

ORDER

-against-

Index No.: 518121/2017
Mo. Seq.: 002

SUCHARITA J. MEHTA, M.D.,

Cal. No.: 11

Defendant.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C

Recitation, as required by CPLR §2219 [a], of the papers considered in the review: NYSCEF #s: 49-56, 57; 59-62; 63, 64-65.

Defendant, SUCHARITA J. MEHTA, M.D., by her attorneys Abrams, Fensterman, LLP moves this court for an Order pursuant to CPLR § 3212 granting summary judgment in favor of defendant SUCHARITA J. MEHTA, M.D., dismissing plaintiff’s Complaint and Amended Complaint and any claims against SUCHARITA J. MEHTA, M.D. in their entirety, with prejudice, on the ground that no triable issue of fact exists with respect to the claims made against said moving defendant.

“In order to establish the liability of a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff’s injuries [internal citations omitted].” *Hutchinson v. New York City Health and Hosps. Corp.*, 172 AD3d 1037, 1039 [2d Dept. 2019] citing *Stukas v. Streiter*, 83 AD3d 18, 23 [2d Dept. 2011]. “Thus, in moving for summary judgment, a physician defendant must establish, prima facie, ‘either that there was no departure or that any departure was not a proximate cause of the plaintiff’s injuries.’”

Hutchinson, 132 AD3d at 1039, citing *Lesniak v. Stockholm Obstetrics & Gynecological Servs.*,

P.C., 132 AD3d 959, 960 [2d Dept. 2015]. “Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause [internal citations omitted].” *Navarro v. Ortiz*, 203 AD3d 834, 836 [2d Dept 2022]. ““When experts offer conflicting opinions, a credibility question is presented requiring a jury’s resolution.”” *Stewart v. North Shore University Hospital at Syosset*, 204 AD3d 858, 860 [2d Dept. 2022] citing *Russell v. Garafalo*, 189 A.D.3d 1100, 1102, [2d Dept. 2020] [internal citations omitted]. “Any conflicts in the testimony merely raised an issue of fact for the fact-finder to resolve.” *Palmiero v. Luchs*, 202 AD3d 989, 992 [2d Dept. 2022] citing *Lavi v. NYU Hosps. Ctr.*, 133 A.D.3d 830, 832 [2d Dept. 2015]. However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise a triable issue of fact [internal citations omitted].” *Wagner v. Parker*, 172 AD3d 954, 966 [2d Dept. 2019].

Defendant Sucharita J. Mehta, M.D.’s expert, Reed E. Phillips, M.D., a physician board certified in Internal Medicine and Medical Oncology established that he is qualified to opine as to the care and treatment rendered to the plaintiff in this case. Plaintiff’s expert, Mark Levin, M.D., a physician board certified in Internal Medicine and Oncology established that he is qualified to opine as to the care the plaintiff received in this case.

In support of the instant motion, Defendant’s expert, Dr. Phillips opines that Plaintiff’s decedent, Mr. Allen, did not display any symptoms of lung cancer prior to a visit with Defendant Dr. Mehta on December 8, 2014. Dr. Phillips further opines that signs and symptoms of lung cancer include, “repeated episodes of pneumonia, acute bronchitis exacerbation, shortness of breath, dyspnea on exertion, hemoptysis, hoarseness, weight loss, anorexia, pleuritic pain, night sweats, cough etc.” Dr. Phillips notes that the tumor was also silent in terms of causing any laboratory findings or findings on a physical exam. Dr. Philips further opines that criteria for a

CT scan include, “1) [t]he patient must be between the ages of 55 years and 74 years ... 2) [t]he patient must be in fairly good health ... 3) [t]he patient must have at least a 30 pack-year smoking history ... and either is still smoking or has quit within the past 3 years.” Dr. Phillips further opines that all such criteria must be met by a patient for that patient to qualify for the test. Dr. Phillips opined that Mr. Allen did not meet the age requirement during the time he was treated by Dr. Mehta, Mr. Allen did qualify under the second requirement, and that although the patient was still smoking the patient did not have a 30-Pack year smoking history. Based on Dr. Phillips application of this criteria to Mr. Allen at the time Mr. Allen was receiving treatment by Dr. Mehta, Dr. Phillips opines that Mr. Allen did not qualify for the test.

In opposition, Plaintiff’s expert Dr. Levin’s affirmation includes unsupported generalizations regarding what should have been done, without, as Defendant states in their reply, “analysis of Dr. Mehta’s care and treatment of decedent.” Specifically, Dr. Levin concludes that “there was a violation of the standard of care in 2013 in treating Mr. Allen for COPD without an articulated basis for the diagnosis, nor any study, including and especially a CT scan of the chest, which would have revealed what was most likely a common non-small cell lung carcinoma.” However, Dr. Levin does not state the applicable standard of care relevant to this matter. Furthermore, Dr. Levin does not explain the criteria for a patient who should have a CT scan of the chest, or the signs and symptoms in this case that fit those criteria. The expert refers to the patient’s complaints of coughing, but these appear in the medical record after he was diagnosed with lung cancer. Additionally, as to proximate cause, Dr. Levin lists the chances of survival at each stage of cancer, indicating that Mr. Allen’s chance of survival decreased as time went on without a proper diagnosis. However, as stated in Defendant’s reply, Dr. Levin does not

provide an “analysis of the lesion, the pathology, the aggressiveness of the cancer or the treatment modalities available.”

The court finds that Defendant Sucharita J. Mehta, M.D. has met their *prima facie* burden for summary judgment, and Plaintiff fails to raise an issue of fact in opposition. Plaintiff has submitted the conclusory expert affirmation of Mark Levin, M.D. in opposition to this motion. “[I]n order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record.” *Tsitrin v. New York Community Hosp.*, 154 A.D.3d 994, 996 [2d Dept. 2017] (holding that summary judgment is warranted where “[t]he opinions of the plaintiff’s experts were conclusory and failed to address specific assertions made by the experts of [the defendant], including those regarding proximate causation.”).

As shown, Dr. Levin does not address the specific assertions made by Defendant’s expert, nor does he provide support for the broad assertions made in his own affirmation. Therefore, Dr. Levin’s affirmation is insufficient to raise an issue of fact.

Accordingly, summary judgment is GRANTED and all claims against Defendant Sucharita J. Mehta, M.D. are dismissed.

The Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court

Dated: December 19, 2023

ENTER.



Hon. Consuelo Mallafre Melendez,
J.S.C.