

Ramsoomye v Jamaica Hosp. Med. Ctr.

2023 NY Slip Op 34979(U)

August 31, 2023

Supreme Court, Queens County

Docket Number: Index No. 709330/2020

Judge: Peter J. O'Donoghue

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Ramsoomye v Jamaica Hospital Medical Center, et al., J. O'Donoghue, July 31, 2023

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE _____
Justice

IA Part MDP

ANAND RAMSOOMYE as Administrator of the Estate of
JAGDHARY RAMSOOMYE ,

Index Number 709330 2020

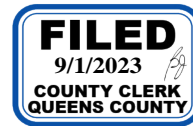
Plaintiff,

Motion Date April 12, 2023

Motion Seq. Nos. 2, 3

-against-

JAMAICA HOSPITAL MEDICAL CENTER and DRY
HARBOR HRF, INC. d/b/a DRY HARBOR NURSING
HOME AND REHABILITATION CENTER,



Defendants.

The following papers read on the separate motions by defendants Jamaica Hospital Medical Center and Dry Harbor HRF, Inc. d/b/a Dry Harbor Nursing & Rehabilitation Center for an order granting summary judgment pursuant to CPLR 3212 and entering judgment in their favor.

	Papers <u>Numbered</u>
Notice of Motion (Seq. No. 2) – Affirmations – Exhibits	EF 27 – 43
Notice of Motion (Seq. No. 3) – Affirmations – Exhibits	EF 44 – 56
Answering Affirmations – Exhibits	EF 58 – 65
Reply Affirmations – Exhibits	EF 66 – 72

Upon the foregoing papers, it is ordered that the motions are consolidated for disposition and are determined as follows:

Jagdhary Ramsoomye (hereinafter the decedent), then 84 years old, was admitted to defendant Jamaica Hospital Medical Center (hereinafter Jamaica Hospital) on April 17, 2017 after suffering a fall at home. He was discharged on May 5, 2017 and became a resident of defendant Dry Harbor HRF, Inc. d/b/a Dry Harbor Nursing & Rehabilitation Center (hereinafter Dry Harbor), a nursing home. On August 12, 2017, the decedent was discharged to his home. The decedent was re-admitted to Jamaica Hospital on December 16, 2017 and stayed until

January 3, 2018, when he returned to Dry Harbor. The decedent stayed at Dry Harbor until he was admitted to Jamaica Hospital on January 26, 2018. Upon his discharge on February 13, 2018, the decedent returned to Dry Harbor until February 21, 2018, when he was admitted to nonparty Long Island Jewish Forest Hills Hospital for respiratory distress and hypotension. The decedent passed away two days later, on February 23, 2018, and his final diagnosis was sepsis secondary to pneumonia.

Plaintiff Anand Ramsoomye, as administrator of the estate of the decedent, commenced the instant action against Jamaica Hospital and Dry Harbor to recover damages for personal injuries. Plaintiff asserts causes of action for medical malpractice, negligence, and violation of New York Public Health Law §§ 2801-d and 2803-c. The crux of plaintiff's claim is that defendants failed to prevent the decedent's development and subsequent deterioration of pressure ulcers between April 2017 and February 2018, resulting in injuries, associated sequelae and eventual death on February 23, 2018.

Defendants now move, in two separate motions, for summary judgment, dismissing all claims against them, on the ground that they did not deviate from good and accepted medical practice, and even if there was a departure, the departure was not causally related to the decedent's injury. Dry Harbor also moves on the grounds that it did not deprive the decedent of any rights or benefits pursuant to the Public Health Law and plaintiff's claims of negligence and carelessness sound in medical malpractice.

A summary judgment proponent must make a prima facie showing of an entitlement to same as a matter of law by tendering sufficient evidence to eliminate any material issues of fact. (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980].) The burden then "shifts to the plaintiff to raise a triable issue of fact as to those elements on which the defendant met its prima facie burden of proof." (*Gaston v New York City Health & Hosps. Corp.*, 207 AD3d 705, 706 [2d Dept 2022], quoting *Carradice v Jamaica Hosp. Med. Ctr.*, 198 AD3d 863 [2d Dept 2021].)

Medical malpractice

"A defendant moving for summary judgment in a medical malpractice action must demonstrate the absence of any material issues of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853) with respect to at least one of the elements of a cause of action alleging medical malpractice: (1) whether the physician deviated or departed from accepted community standards of practice, or (2) that such a departure was a proximate cause of the plaintiff's injuries." (*Williams v Halstead*, 202 AD3d 891, 892 [2d Dept 2022], quoting *Russell v Garafalo*, 189 AD3d 1100, 1101 [2d Dept 2020].) "[T]he defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's complaint and bill of particulars." (*Vargas v Lee*, 207 AD3d 684, 685 [2d Dept 2022], quoting *Wiater v Lewis*, 197 AD3d 782, 783 [2d Dept 2021].) A physician may establish that he or she did not depart or deviate from accepted medical practice in his or her treatment of the patient, and that he or she was not the proximate cause of the plaintiff's injuries through the submission of medical records and competent expert

affidavits. (*See Shirley v Falkovsky*, 207 AD3d 679 [2d Dept 2022]; *Joyner v Middletown Med., P.C.*, 183 AD3d 593 [2d Dept 2020].)

General allegations of medical malpractice, merely conclusory in nature and unsupported by competent evidence establishing the essential elements of the claim, are insufficient to defeat a motion for summary judgment. (*See Palagye v Loulmet*, 203 AD3d 729 [2d Dept 2022].) “In 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.” (*Mendoza v Maimonides Med. Ctr.*, 203 AD3d 715 [2d Dept 2022], quoting *Tsitrin v New York Community Hosp.*, 154 AD3d 994, 996 [2d Dept 2017].)

Jamaica Hospital submitted, inter alia, the affirmation of Umesh K. Gidwani, M.D., M.S., a physician licensed to practice in the State of New York and is board certified in pulmonary diseases, critical care medicine and palliative care medicine. Dr. Gidwani reviewed the pertinent medical and nursing home records, pleadings and plaintiff's deposition testimony, and opined, to a reasonable degree of medical certainty, that Jamaica Hospital did not depart from the standard of good and accepted care with respect to the other care, treatment and management of the decedent. He further opined that any alleged departures were not a proximate cause of the decedent's injuries.

Dry Harbor submitted, inter alia, the affirmation of Gisele P. Wolf-Klein, M.D., FACP, a physician licensed to practice in the State of New York and a Diplomate of the American Board of Internal Medicine with additional qualifications in geriatric medicine. Dr. Wolf-Klein reviewed the relevant medical and nursing home records, pleadings and plaintiff's deposition testimony. Dr. Wolf-Klein opined that, within a reasonable degree of medical certainty, “no act or omission by Dry Harbor caused or contributed to the development and/or deterioration of [the decedent's] pressure ulcers.” Dr. Wolf-Klein further opined that the decedent was “approaching end of life when he was first admitted to Dry Harbor in May of 2017.” Dr. Wolf-Klein averred that none of the decedent's wounds developed or deteriorated during his three admissions to Dry Harbor.

In opposition to defendants' prima facie showing, plaintiff submitted the affirmation of a physician licensed to practice in the State of New York, board certified in internal medicine and geriatric medicine and a Diplomate of the National Board of Medical Examiners. With respect to Jamaica Hospital, plaintiff's expert opined, within a reasonable degree of medical certainty, the lack of care given to the decedent deviated from good and accepted medical and nursing care and resulted in the decedent's development and/or deterioration of multiple pressure ulcers. Plaintiff's expert further opined that the medical care rendered by Jamaica Hospital was inconsistent with the applicable state and federal regulations applicable during the time of the decedent's admissions.

With respect to Dry Harbor, plaintiff's expert similarly opined, within a reasonable degree of medical certainty, that Dry Harbor deviated from good and accepted medical practice and that these deviations proximately caused the deterioration of the decedent's pressure ulcers. Plaintiff's expert further explained that the decedent's multiple comorbidities and prior medical

conditions may have increased his risk factor for the development and deterioration of pressure ulcers, but they certainly did not cause the decedent's pressure ulcers, nor did they render the deterioration as clinically unavoidable. Plaintiff's expert averred that the decedent's skin breakdown was caused by unrelieved pressure.

“Summary judgment may not be awarded in a medical malpractice action where the parties adduce conflicting opinions of medical experts, which present a credibility question requiring a jury's resolution.” (*Berger v Hale*, 81 AD3d 766, 766 [2d Dept 2011]; *see Salgado v North Shore Univ. Hosp.*, 167 AD3d 1057 [2d Dept 2018]; *Reustle v Petraco*, 155 AD3d 658 [2d Dept 2017].) The court has considered all of the papers submitted and based on the record, triable issues of fact abound, including, but not limited to: the cause of the decedent's skin breakdown, whether the decedent's risk of developing pressure ulcers should have been evaluated more frequently and whether the decedent was turned and repositioned every two hours while he was at Jamaica Hospital and Dry Harbor. The existence of these material factual issues obviates the granting of summary judgment to defendants. (*See Stucchio ex rel. Hernandez v Bikvan*, 155 AD3d 666, 667 [2d Dept 2017]; *Lesniak v Stockholm Obstetrics & Gynecological Services, P.C.*, 132 AD3d 959 [2d Dept 2015].)

Public Health Law violations

Public Health Law § 2801-d authorizes a private right of action by patients of “residential health care facilities” for the violation of rights enumerated in Public Health Law § 2803-c. “Liability under the Public Health Law contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule, subject to the defense that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient.” (*Schwartz v Partridge*, 179 AD3d 963, 965 [2d Dept 2020], quoting *Moore v St. James Health Care Ctr., LLC*, 141 AD3d 701, 703 [2d Dept 2016].) Thus, under Public Health Law § 2801-d, the basis for liability “is neither deviation from accepted standards of medical practice nor breach of a duty of care.” (*Schwartz v Partridge*, 179 AD3d at 965, quoting *Novick v South Nassau Communities Hosp.*, 136 AD3d 999, 1001 [2d Dept 2016].) To sustain the claim for Dry Harbor's alleged violation of the Public Health Law, plaintiff was required to set forth sufficient evidence that the decedent was “depriv[ed] of a right conferred by contract, statute, regulation, code or rule.” (*Novick v South Nassau Communities Hosp.*, 136 AD3d at 1001.)

Here, Dry Harbor established its prima facie entitlement to judgment as a matter of law by submitting evidence that it complied with the applicable federal and state regulations. (*See Schwartz v Partridge*, 179 AD3d at 965.) Dr. Wolf-Klein opined that the decedent did not develop new pressure ulcers at Dry Harbor and Dry Harbor provided the necessary care to promote healing and to prevent new sores from developing.

However, in opposition, plaintiff raised a triable issue of fact as to whether Dry Harbor violated 10 NYCRR § 415.12 (c), 10 NYCRR § 415.22 and 42 CFR 483.25 (b). Plaintiff's expert stated that his/her review of the decedent's turning and positioning charts at Dry Harbor revealed entries at eight-hour intervals without indicating whether any repositioning was done during those intervals. The existence of this material factual issue obviates the granting of summary

judgment to Dry Harbor. (*Alvarez v Prospect Hosp.*, 68 NY2d at 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853.)

Negligence

With respect to a negligence cause of action, the elements of proof are “the existence of a duty, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries.” (*Rubin v Staten Is. Univ. Hosp.*, 39 AD3d 618 [2d Dept 2007].) Nursing homes and rehabilitation centers providing physical care to patients have a general duty not to depart from acceptable standards of medical and nursing care customarily exercised in similar facilities. (*See Rosen v John J. Foley Skilled Nursing Facility*, 45 AD3d 558, 559 [2d Dept 2007].) “The distinction between ordinary negligence and malpractice turns on whether the acts or omissions complained of involve a matter of medical science or art requiring special skills not ordinarily possessed by lay persons or whether the conduct complained of can instead be assessed on the basis of the common everyday experience of the trier of the facts.” (*Rivera v Advanced Allergy & Asthma Assessment & Diagnostics, P.C.*, 211 AD3d 759, 760-61 [2d Dept 2022]; *Jeter v New York Presbyt. Hosp.*, 172 AD3d 1338, 1339 [2d Dept 2019].)

Here, the branch of Dry Harbor’s motion seeking dismissal of plaintiff’s cause of action alleging negligence is granted, as plaintiff did not oppose this branch in his opposition papers. As to Jamaica Hospital, since Jamaica Hospital failed to address this claim in its moving papers, summary judgment is not warranted. (*See Martinez v Orange Regional Med. Ctr.*, 203 AD3d 910 [2d Dept 2022].)

The court has considered the parties’ remaining contentions and finds them unavailing.

Accordingly, Jamaica Hospital’s motion for summary judgment is denied. Dry Harbor’s motion for summary judgment is granted in part and denied in part. Dry Harbor’s motion is granted, without opposition, as to the fifth cause of action alleging negligence. Dry Harbor’s motion is denied with respect to the remaining causes of action.

Dated: August 31, 2023



PETER J. O'DONOGHUE, J.S.C.

