

Hammond v NYU Langone Hosp.-Brooklyn

2024 NY Slip Op 31721(U)

May 15, 2024

Supreme Court, Kings County

Docket Number: Index No. 523214/2017

Judge: Consuelo Mallafre Melendez

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At an IAS Term, Part 15 of the Supreme Court of the State of NY,
held in and for the County of Kings, at the Courthouse, at 360
Adams Street, Brooklyn, New York, on the 15th day of May 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
SHARON HAMMOND, as Administratrix of the Estate of
JOHNNIE HAMMOND,

Plaintiff,

-against-

NYU LANGONE HOSPITAL – BROOKLYN f/k/a NYU
LUTHERAN MEDICAL CENTER,

Defendants.

-----X
HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

DECISION & ORDER

Index No. 523214/2017
Mo. Seq. 4

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: 74-99

Defendant NYU Langone Hospital – Brooklyn f/k/a NYU Lutheran Medical Center (“NYU Langone”) moves (Seq. No. 4) for an Order, pursuant to CPLR 3212, granting summary judgment and dismissing all claims and causes of action against said defendant. Plaintiff opposes this motion.

Plaintiff commenced this action on December 1, 2017, as administrator of the estate of Johnnie Hammond (“Decedent”), alleging claims of medical malpractice and negligence against NYU Langone in connection to prevention and treatment of pressure ulcers.

Decedent was admitted to NYU Langone from March 8, 2015 through June 12, 2015. He first presented in the emergency department in a prolonged seizure episode. He was admitted to the medical intensive care unit with a diagnosis of status epilepticus and a history including alcoholism, active seizure disorder, hypertension,

and renal failure. He was further treated for cardiac arrest, sepsis, and respiratory failure, and he was bedbound and ventilator dependent throughout his admission.

Decedent developed multiple pressure ulcers during his hospitalization, including a stage 4 sacral pressure ulcer, stage 2 left buttock pressure ulcer, skin tears/excoriation on his left shin and bilateral ears, and a deep tissue injury on his right foot sole. A CT scan revealed osteomyelitis in the coccyx and sacral area on May 8. He was ultimately discharged on June 12, 2015, to a rehabilitation and nursing facility.

Plaintiff alleges that NYU Langone, through its nurses, doctors, and agents/employees, departed from the standard of care in providing proper skin assessments, timely consults, and pressure ulcer prevention and treatment, and those departures proximately caused the development and deterioration of Decedent's pressure ulcers and deep tissue injuries.

Generally, “[i]n determining a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party” (*Stukas v Streiter*, 83 AD3d 18, 22 [2d Dept 2011]). In evaluating a summary judgment motion in a medical malpractice case, the Court applies the burden shifting process as summarized by the Second Department:

“The elements of a medical malpractice cause of action are a deviation or departure from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries. When moving for summary judgment, a defendant provider has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby. In order to sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars. In opposition, the plaintiff must demonstrate the existence of a triable issue of fact as to the elements on which the defendant has met his or her initial burden. General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant's summary judgment motion. Although summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions, expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023] [internal quotation marks and citations omitted]).

An expert opinion need not be provided by a specialist, but the expert must demonstrate that they are “possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable” (*DiLorenzo v Zaso*, 148 AD3d 1111, 1112-1113 [2d Dept 2017]). For example, a medical doctor of plastic surgery and wound care may nonetheless lay a proper foundation of experience and education to opine on the prevention and treatment of pressure ulcers (*see Cerrone v North Shore-Long Is. Jewish Health Sys, Inc.*, 197 AD3d 449, 452 [2d Dept 2021]). Conversely, it is well-established that a nurse cannot render an opinion on the medical decisions and treatment of a physician beyond the scope of their nursing expertise (*see Boltyansky v New York Community Hosp.*, 175 AD3d 1478, 1479 [2d Dept 2019]; *Novick v South Nassau Communities Hosp.*, 136 AD3d 999, 1001 [2d Dept 2016])). The Second Department has held that while a registered nurse is qualified to render an opinion on departures from the standard of nursing care, they are not qualified to offer a medical opinion on whether those departures proximately caused the patient’s injuries (*Zak v Brookhaven Mem. Hosp. Med. Ctr.*, 54 AD3d 852, 853 [2d Dept 2008]). When addressing pressure ulcers specifically, a nurse lacks the qualifications to opine on whether a pressure ulcer was the “inevitable” result of the patient’s other complex health conditions (*Novick*, at 1001).

In support of this motion, NYU Langone submits an expert affirmation from Lena Rome, a registered nurse with board certification in wound, ostomy, and continence care (“RN Rome”), as well as medical records and deposition transcripts.

Based on her review of the record, RN Rome opines that the nursing assessments, recommendations, and care implemented were within good and accepted standards. Specifically, RN Rome states that Decedent was properly and regularly assessed with a Braden under 18 (high risk for pressure ulcers) and a protocol known as the “SKINSAVERS bundle” was utilized, which consisted of “maximum tilt position for the bed, daily skin inspections, nutrition and hydration improvement, suspension of heels, application of moisture barriers, skin care and moisturization, encouragement of mobility, repositioning every two hours, and use of supporting mattress and chairs.” RN Rome opines that this course of treatment was appropriate and that the nursing progress notes

demonstrate the nursing staff performed SKINSAVERS interventions and daily skin assessments.

RN Rome also opines that Decedent's nutrition was properly managed with a feeding tube and IV fluids. RN Rome notes that after a nurse practitioner wound consult in May, the sacral ulcer was treated with TenderWet dressings, which she opines is appropriate for debridement of a stage 4 ulcer.

RN Rome further opines that no acts or omissions by NYU Langone staff were a proximate cause of the Decedent's alleged injuries. Instead, RN Rome opines that Decedent's "multiple, complex medical issues and conditions" and his "extensive comorbidities" resulted in organ failure, including unavoidable skin breakdown and inability to heal. RN Rome states that there is no indication of any wounds becoming infected during Decedent's hospitalization at NYU Langone.

The submissions of NYU Langone's expert establish a prima facie case that there were no departures from the standard of care with respect to nursing care – specifically, the skin assessments performed by the nursing staff and their application of the SKINSAVERS interventions. Notwithstanding those alleged departures, RN Rome is not qualified to opine on the standard of care as to medical recommendations and treatment, including the timeliness of Decedent's wound care consultations, debridement and treatment of the wound, or any care plan directed or performed by physicians.

RN Rome also does not have the requisite qualifications to opine on proximate causation of Decedent's alleged injuries. RN Rome opines that Decedent's worsening pressure ulcers were "unavoidable due to [his] multitude of complex medical conditions," but she does not have the background of a medical doctor to opine on those complex conditions and their role in the development and deterioration of pressure ulcers, nor does the law permit it.

Additionally, RN Rome's claim that no pressure ulcers or wounds became infected during Decedent's admission is conclusory and not supported by the record. Decedent was recorded to have sepsis secondary to pneumonia and suspected wound infection following his admission, and a CT scan on May 8 confirmed osteomyelitis (*see* NYSCEF Doc No. 83, at 16).

Because NYU Langone's submissions meet the prima facie burden for summary judgment only with

respect to alleged departures from the standard of care by the nursing staff, these are the claims on which Plaintiff is obligated to raise a triable issue of fact.

In opposition, Plaintiff submits an expert affirmation from a licensed physician certified in emergency medicine (name of expert redacted). The Court was presented with the signed, unredacted affirmation for *in camera* inspection. Plaintiff's expert avers that they have experience in wound care, including as a medical director at the Center for Wound Healing and Hyperbaric Medicine, a member of the Wound Healing Society, and a published author of medical journal articles and textbook chapters related to wound care. The expert also avers they are familiar with the standards for prevention and treatment of pressure ulcers in a hospital setting and the responsibilities of physicians and nurses. As such, they have established the qualifications to render an opinion on the care and treatment at issue.

Plaintiff's expert opines, *inter alia*, that NYU Langone departed from the standard of care by failing to take detailed assessments of Decedent's wounds and to implement a personalized care plan based on the size and stage of his developing pressure ulcers. Plaintiff's expert notes that a pressure ulcer was first documented on Decedent's chart in March 19 without any details on its location, stage, or size. Another wound was documented in illegible writing on April 15. Plaintiff's expert opines that the wounds on Decedent's shin, ears, and right foot sole were inconsistently recorded and often absent from the daily Skin and Wound Assessment and Treatment forms. Plaintiff's expert opines that NYU Langone nursing staff and other personnel departed from the standard of care by failing to consistently and accurately document Decedent's pressure ulcers as they progressed.

Plaintiff's expert further notes that there were multiple days when the SKINSAVERS bundle was not referenced in Decedent's chart, and that despite the recommendation from the wound care specialist to apply TenderWet dressings, only dry dressings were mentioned before May 18. The expert opines that the standard of care for Decedent's high-risk Braden score and multiple pressure ulcers required turning and repositioning at least every two hours, and while this was one element of the "generic SKINSAVERS bundle," it is unclear from the record if those procedures were followed each day.

To the extent that movant's expert, RN Rome, met their burden on summary judgement as to alleged

departures from the standard of nursing care, Plaintiff raises issues of fact as to the actual implementation of the SKINSAVERS protocol and skin assessments provided by the nursing staff. While movants did not establish their burden on proximate cause, as discussed above, Plaintiff's expert opined in detail that the alleged nursing and medical departures were a proximate cause of Decedent's injuries. Accordingly, NYU Langone's motion for summary judgment is denied.

Accordingly, it is hereby:

ORDERED that NYU Langone's motion (Seq. No. 4) for an Order, pursuant to CPLR 3212, granting summary judgment and dismissing all claims and causes of action against said defendant, is **DENIED**.

This constitutes the decision and order of this Court.

ENTER.



Hon. Consuelo Mallafré Meléndez

J.S.C.