

Gallo v Clove Lakes Health Care & Rehabilitation Ctr., Inc.
2024 NY Slip Op 35210(U)
January 22, 2024
Supreme Court, Richmond County
Docket Number: Index No. 152301/2020
Judge: Judith N. McMahon
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X **IAS Part 6**
RAE GALLO, Deceased, by and through KATHY
GALLO, as Executor of the Estate of RAE GALLO, **Present:**

Plaintiff,**HON. JUDITH N. MCMAHON****Index No. 152301/2020****-against-****Mot. Seq. Nos: 001, 002, 003,**
004

CLOVE LAKES HEALTH CARE AND REHA-
BILITATION CENTER, INC., FSNR SNF, LLC
d/b/a FOUR SEASONS NURSING AND REHA-
BILITATION CENTER, FOUR SEASONS
NURSING AND REHABILITATION CENTER,
STATEN ISLAND UNIVERSITY HOSPITAL and
NORTHWELL HEALTH, INC.,¹

DECISION AND ORDER**Defendants.**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 30-52, 64-69, 113-118 were read on this motion for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53-63, and 119 were read on this motion for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 70-88, and 107-112 were read on this cross motion for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89-106, and 120-122 were read on this cross motion for SUMMARY JUDGMENT

Upon the foregoing papers, the motion for summary judgment of the defendant FSNR, SNF, LLC d/b/a FOUR SEASONS NURSING AND REHABILITATION CENER, FOUR SEASONS NURSING AND REHABILITIATION CENTER (hereinafter "Four Seasons") (Motion Seq. No. 001) is granted and the complaint and all cross claims are severed and dismissed.

¹ SIUH and Northwell Health, Inc., seek no affirmative relief and take no position on the motions.

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The motion for summary judgment of the defendant CLOVE LAKES HEALTH CARE AND REHABILITATION CENTER, INC. (hereinafter “Clove Lakes”) (Motion Seq. No. 002) is granted to the extent that plaintiff’s claims for gross negligence, punitive damages, and damages pursuant to the New York Public Health Law are severed and dismissed, and the balance of the motion is denied. Plaintiff’s cross motions for summary judgment against Four Seasons and Clove Lakes (Motion Seq. Nos. 003, 004) under the Public Health Law are denied, and plaintiff’s claim for recovery under the doctrine of *res ipsa loquitur* is severed and dismissed. Plaintiff’s only surviving cause of action against the moving defendants is her “Second” cause of action for negligence against Clove Lakes.

This matter arises out of care and treatment rendered to plaintiff’s late mother, the 91-year-old decedent, Rae Gallo, relative to, *inter alia*, the development and worsening of numerous pressure ulcers during her residency at **Clove Lakes** between **September 10, 2018 and October 1, 2018**, and at **Four Seasons** between **December 7, 2018 and** the date of her death from natural causes² on **January 24, 2019**. At issue is the development of a stage III sacral ulcer into an infected stage IV sacral ulcer while at Clove Lakes, and the development of an unstageable right heel pressure ulcer into a stage IV ulcer while at Four Seasons (*see* NYSCEF Doc. Nos. 38, 62).

It is undisputed that Mrs. Gallo underwent debridement of the sacral ulcer at Staten Island University Hospital (hereinafter “SIUH”) on November 5, 2018, where she remained hospitalized for two months (*i.e.*, between October 1, 2018, and December 7, 2018) until her transfer to Four Seasons.

Plaintiff’s First and Fourth Causes of Action are against Clove Lakes and Four Seasons for punitive damages arising from the deprivation of Ms. Gallo’s rights as a resident of these facilities

² Plaintiff’s decedent death certificate lists the immediate cause of death as cardiorespiratory arrest due to hypertensive heart disease and diabetes (*see* NYSCEF Doc. No. 48, p. 5).

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pursuant to, *inter alia*, New York Public Health Law 2801-d, *et. seq.* Plaintiff's Second, Third, Fifth and Sixth causes of action sound in negligence and gross negligence against Clove Lakes and Four Seasons.

FACTUAL BACKGROUND

Plaintiff's decedent, Rae Gallo, was admitted to Clove Lakes on October 14, 2016, and remained a resident intermittently therein for nearly two years prior to the events underlying this action.

On August 30, 2018, Mrs. Gallo was transferred to SIUH for treatment of a urinary tract infection. At that point she was also suffering from dementia, confusion, and functional decline/failure to thrive. Mrs. Gallo returned to Clove Lakes on September 10, 2018, with admitting diagnoses of Alzheimer's disease, abnormal gait and mobility, muscle weakness, diabetes mellitus, a stage III pressure ulcer to the sacrum, a stage II pressure ulcer to the right buttock, a stage II pressure ulcer to the left buttock, and other chronic ulcers of the lower extremities.

On October 1, 2018, while being prepped for discharge home, Mrs. Gallo was found to be suffering from a foul-smelling sacral pressure ulcer. She was emergently admitted to SIUH where she was diagnosed with an infected, gangrenous stage IV sacral pressure ulcer that required surgical debridement. The debridement was performed on November 5, 2018.

Mrs. Gallo was discharged from SIUH after a two-month stay, and was transferred to Four Seasons on December 7, 2018, as that was the only facility that would accept her (*see* EBT of Kathy Gallo, NYSCEF Doc. No. 39, p. 168, l. 16). Her admitting diagnoses at Four Seasons included dementia, stage III chronic kidney disease, diabetes, hypertension, dysphagia GERD, and existing pressure wounds including sacral, right shoulder, left knee, left lateral leg, left shin and

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both heels. She was immobile and incontinent. Mrs. Gallo remained at Four Seasons for six weeks until she passed away.

MOTIONS FOR SUMMARY JUDGMENT AND DEFENDANTS' EXPERT OPINIONS**1. Four Seasons' Motion for Summary Judgment**

Four Seasons moves for summary judgment (Motion Seq. No. 001) arguing, *inter alia*, that during Mrs. Gallo's residency it complied with the standard of care and did not deprive decedent of her applicable "rights or benefits" under New York Public Health Law §2801 *et. seq.* Four Seasons denies that it acted in reckless disregard of Mrs. Gallo's right to a dignified existence and maintains that its actions or inactions were not a proximate cause of her death which resulted, rather, from her multiple comorbidities.

In support of the motion, Four Seasons relies upon the expert medical affirmation of geriatrician and internist, Cameron R. Hernandez, M.D. (*see* NYSCEF Doc. No. 33), who explains that Mrs. Gallo arrived at Four Seasons in "the active stage of dying," (*id.*, para. 15) and was suffering from multi-organ failure and eleven documented pre-existing pressure wounds "all in an advanced stage, with either necrosis or slough" (*id.*, para 14). Five of these wounds healed while at Four Seasons (*id.*, para 33).

According to Dr. Hernandez, Four Seasons met the applicable standard of care for nursing home residents by "performing a proper assessment, identifying clinical risks and clinical conditions, putting appropriate interventions in place, documenting routine and individualized pressure ulcer interventions, and then modifying those interventions as necessary" (*id.*, para. 7). Four Seasons complied with this standard when it: (1) performed a comprehensive assessment that noted decedent's use of anticoagulant medications; (2) documented all eleven wounds; (3) utilized a Braden scale which revealed a "high" risk of skin breakdown, and (4) created multiple care plans

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including a weekly assessment of wounds, turning and positioning every two hours, use of a pressure-relieving mattress, administration of nutritional supplements and vitamins, and wound treatment by the doctors. According to the records, Four Seasons properly treated the stage IV sacral wound with Hydrogel dressings and later, with calcium alginate, and it properly treated the unstageable heel wound by using dry protective coverings.

Dr. Hernandez sets forth that upon admission, the decedent's stage IV sacral wound was 6 cm x 6 cm (*id.*, para. 13), meaning that the wound extended to the muscle, tendon or bone. The expert explains that the increase in size to 12 cm x 12 cm is not evidence of neglect by Four Seasons, but rather, an unavoidable consequence of wound etiology, demonstrating that healthy, viable tissue was developing. Here, Four Seasons administered the debriding agent calcium alginate on December 24, 2018, to absorb non-viable tissue and promote healing. According to Dr. Hernandez "[b]y absorbing non-viable tissue wound dimensions increase and thus, the size of a wound does not mean a wound is deteriorating...removal of the dead tissue increases the surface area of the wound" (*id.*, para 24). Appropriate care is also evidenced by the fact that the sacral wound showed granulated tissue.

Likewise, Dr. Hernandez opines "within a reasonable degree of medical certainty" that the unstageable right heel wound, later described as a **stage IV right heel wound**, did not indicate progression of the wound, but merely reflected that the depth of the wound could finally be determined due to the top layer of tissue sloughing off (*id.*, para 32)). That wound also had 80% granulated tissue, demonstrating that healing was underway.

Dr. Hernandez concedes that a 6 cm x 6 cm pressure ulcer developed on decedent's right buttocks during her stay at Four Seasons but explains that this "unstageable wound was unavoidable" as Mrs. Gallo's skin was already failing due to, *inter alia*, her "age and multiple

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medical issues” (*id.*, para. 26), including thinning of the dermis and epidermis, diabetes, hypertension, anemia, dementia, and the fact that she was non-ambulatory.

2. Clove Lakes’ Motion for Summary Judgment

Clove Lakes moves for summary judgment (Motion Seq. No. 002) arguing, *inter alia*, that it did not act in reckless disregard of Mrs. Gallo’s rights and benefits under PHL §2801-d, that its conduct did not constitute gross negligence, and that Clove Lakes complied with the appropriate standard of care in treating decedent. In support, Clove Lakes submits the expert affidavit of an internist and geriatrician, Roy Goldberg, M.D. (*see* NYSCEF Doc. No. 57), who opines “within a reasonable degree of medical certainty” that Clove Lakes “exercised all care reasonably necessary to prevent and limit the deprivation of the rights of plaintiff’s decedent and any injuries claimed to have resulted therefrom” and that “no acts or omissions by Clove Lakes or its staff in the course of treating decedent evinced intentional wrongdoing or a reckless indifference to [her] rights” (*id.*, para 7, 8).

Dr. Goldberg sets forth that on September 10, 2018, Mrs. Gallo was assessed to be suffering from a stage III sacral pressure ulcer measuring 3 cm x 3cm x 0.2 cm, stage II pressure ulcers of the bilateral buttocks, and vascular ulcers to the bilateral heels and right shin. He notes that “despite the facility’s implementation of the appropriate intervention and care methods...the condition of the sacral and left buttock pressure ulcers...became worse as evidenced by their growing in size” (*id.*, para. 25), leading to her admission to SIUH on October 1, 2018, for continuing treatment of her sacral wound.

According to Dr. Goldberg, Clove Lakes complied with the standard of care by: (1) accurately assessing Mrs. Gallo’s medical condition upon her admission; (2) recording and communicating admission assessments and nursing care needs; (3) accurately identifying and

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diagnosing all pressure ulcers; (4) evaluating Mrs. Gallo's risk level for skin injury; (5) developing and maintaining care plans in accordance with applicable standards of nursing care, and (6) prescribing the proper medication and treatment orders and updating those orders as needed. Dr. Goldberg finds no evidence that any acts or omissions by Clove Lakes or its staff were intentionally wrongful or that Clove Lakes was recklessly indifferent to decedent's condition, and concludes that from September 10, 2018, to October 1, 2018, Clove Lakes and its staff made every effort reasonably necessary to ensure that the care received by decedent conformed to all applicable standards of nursing care.

3. Plaintiff's Motion for Summary Judgment against Four Seasons

In opposition to Four Seasons' motion and in support of her motion for summary judgment on the issue of liability pursuant to PHL §2801, plaintiff submits the medical affirmation of geriatrician and internist, Ronald Jeffrey Schwartz, M.D.³ (*see* NYSCEF Doc. No. 73), who opines, *inter alia*, that Mrs. Gallo's pressure ulcers were "manageable" and that the development of a new ulcer on her right buttocks while at Four Seasons was "avoidable."

According to Dr. Schwartz, Four Seasons departed from the standard of care by failing to: (1) properly assess Mrs. Gallo, leading to inadequate wound care during her residency; (2) conduct weekly wound rounds between December 7th and December 18th resulting in eleven days of non-treatment; (3) implement a proper turn and position schedule, resulting in the development of an avoidable right buttock ulcer on December 24, 2018 (*id.*, at para 65); (4) implement a proper

³ Four Seasons objects to plaintiff's "out-of-state" expert, who has purportedly never worked in a nursing home, does not currently practice in New York, and is presumably unfamiliar with PHL §2801-d, "the sole basis of plaintiff's claims against Four Seasons" (*see* NYSCEF Doc. No. 107, para. 10). Dr. Schwartz is currently licensed to practice in Connecticut and Florida (*see* NYSCEF Doc. No. 73, para. 1) and completed a Residency and Fellowship in Internal Medicine in New York. This Court will consider the affirmation of Dr. Schwartz for purposes of these motions and defers the determination of the weight to be given to the expert's testimony to the Trial Court.

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incontinence program by changing decedent's sacral dressings following bowel movements⁴; (5) conduct and record wound rounds between January 10th and January 15th; (6) prevent progression of the sacral wound and right heel pressure wound, and prevent a new right buttock ulcer on December 24, 2018; (7) respond to an active infection process (*i.e.*, failing to put Northwell's "multidrug resistant sepsis" order into the Four Seasons system until December 20, 2018); (8) permit nursing staff to contact a doctor unless decedent's glucose reading was above 400; (9) timely obtain the results of bloodwork drawn on January 9, 2019, which ultimately revealed an elevated white blood cell count and high levels of urea nitrogen indicative of infection, and (10) timely and appropriately refer decedent to the emergency room for further evaluation and management upon receipt of the January 9, 2019 lab results.

Dr. Schwartz opines that Mrs. Gallo was not terminal on December 7th "but was allowed to get worse and worse throughout January 2019 without proper assessment and care by Four Seasons." He concludes within a reasonable degree of medical certainty that the applicable standard of care required an assessment by a medical practitioner on or about January 9, 2019, "and certainly well before January 17, 2019...and transfer to an emergency room...[and] not doing so deprived [plaintiff's decedent] of the right to obtain timely and proper medical care" (*id.*, para. 61).

Relying on the "aforementioned facts from the record," Dr. Schwartz opines that Four Seasons deprived Mrs. Gallo of her 'rights or benefits' under PHL 2801-d and proximately caused or contributed to her alleged injuries (*id.*, para. 62).

⁴ Plaintiff's expert does not cite Four Seasons' medical records relative to this allegation.

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In opposition to Clove Lakes' motion and in support of her motion for summary judgment on the issue of Clove Lakes' reckless disregard for Mrs. Gallo's health, safety, and legal right to adequate and proper medical care, plaintiff relies on Clove Lakes' medical records and the affirmation of Dr. Schwartz to demonstrate, *inter alia*, that all of her facility-acquired pressure ulcer injuries were avoidable. Plaintiff maintains that Clove Lakes departed from the standard of care when it failed to: (1) develop and implement a proper turn and position schedule of every 2 hours (rather than every 2-4 hours) "sometimes leaving [Mrs. Gallo] on her back for up to eight hours" (*id.*, para. 17), thereby allowing her wounds to worsen significantly between September 13th and September 20th; (2) implement a proper incontinence program of checking and changing briefs every 2 hours (rather than three-times a day, with no checking and changing briefs between 10:30 p.m. and 4:30 a.m.), thereby allowing Mrs. Gallo to remain overnight in soiled briefs, resulting in recurrent UTIs and infection⁵; (3) prevent progression of the pressure ulcers to stage IV and allowing the ulcers to become infected and gangrenous; (4) observe or timely act upon signs of significant infection, and (5) schedule Mrs. Gallo's discharge home on October 1, 2018 despite the presence of a foul-smelling necrotic ulcer. According to Dr. Schwartz, the gangrenous sacral wound was "repeatedly and erroneously referenced as a worsening stage II left buttock ulcer" (*id.*, para. 34).

⁵ Here, Dr. Schwartz informs that on September 10, 13, 16, 21 and 27, decedent had bowel movements between 8-10 p.m. but no dressing changes until the next day.

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Defendants' motions for summary judgment dismissing plaintiff's claims pursuant to the Public Health Law and related federal statutes is granted, and plaintiff's "First" and "Fourth" Causes of Action are severed and dismissed.

"The basis for liability under [Public Health Law §2801-d] is neither deviation from accepted standards of medical practice nor breach of a duty of care. Rather, it contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule" (*Novick v. South Nassau Communities Hosp.*, 136 AD3d 999 [2d Dept. 2016], *quoting Zeides v. Hebrew Home for Aged of Riverdale*, 300 AD2d 178, 179 [1st Dept. 2002]; *see also Moore v. St. James Health Care Ctr., LLC*, 141 AD3d 701, 703 [2d Dept. 2016]). The existence of a violation alone, without more, will not suffice for the imposition of liability. To prevail on a claim predicated on Public Health Law §2801-d, the plaintiff must establish that the alleged deprivation of a right or benefit proximately caused an injury (*Gold v. Park Ave. Extended Care Ctr. Corp.*, 90 AD3d 833, 834 [2d Dept. 2011]).

It is defendant's initial burden on the motion to make an evidentiary showing with "[a]n affirmation by defendant's expert physician, opining that the defendant did not violate the various federal and state regulations set forth in the plaintiff's bill of particulars as the basis for this cause of action, and that even if any regulations were violated, none of the alleged injuries was proximately caused by these violations" (*see Gold v. Park Ave. Extended Care Ctr. Corp.*, 90 AD3d 833, 834 [2d Dept. 2011]).

Here, both Four Seasons and Clove Lakes have satisfied their burden on the motion through submission of the expert affirmations of Dr. Hernandez and Dr. Goldberg. In opposition, plaintiff

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was required to raise a triable issue of fact via a non-conclusory expert affirmation substantiating the alleged violations of the claimed regulations (*id.*).

While plaintiff's expert, Dr. Schwartz, disagrees with the findings and conclusions of defendants' experts, his own conclusion that Mrs. Gallo was "deprived of her rights as a nursing home resident to receive, amongst other things, adequate and necessary wound care-causing her further injury" (*see* NYSCEF Doc. No. 73, para.19) is unsubstantiated. Plaintiff has failed to establish a factual basis for the causes of action based on violations of the Public Health Law, and Dr. Schwartz' allegations of statutory violations are insufficient to raise a triable issue of fact sufficient to defeat summary judgment on the issue of the applicability of the Public Health Law and federal statute 42 CFR §483.1 *et seq.* Accordingly, plaintiff's First and Fourth Causes of Action are severed and dismissed.

2. Liability for Gross Negligence

Defendants' motions for summary judgment dismissing plaintiff's causes of action for gross negligence and plaintiff's claim for punitive damages is granted, and plaintiff's "Third" and "Sixth" Causes of Action are severed and dismissed.

To constitute gross negligence, a party's conduct must "smack of intentional wrongdoing, or evince a reckless disregard for the rights of others" (*Sommer v. Federal Signal Corp.*, 79 NY2d 540, 554, *quoting Kalisch-Jarcho, Inc., v. City of New York*, 58 NY2d 377 (1983)). "Stated differently, a party is grossly negligent when it fails 'to exercise even slight care' or 'slight diligence'" (*Ryan v. IM Kapco, Inc.*, 88 AD3d 683, 683 [2d Dept. 2011]).

Construing the evidence in a light most favorable to the plaintiff, this Court finds that defendants met their initial burden by establishing "the absence of any conduct that could be viewed as so reckless or wantonly negligent as to be the equivalent of a conscious disregard of the

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rights of others” (*Everett v. Loretto Adult Community, Inc.*, 32 AD3d 1273, 1274 [4th Dept. 2006]; see *Rey v. Park View Nursing Home*, 262 AD2d 624, 627 [2d Dept. 1999]). In opposition, the plaintiff failed to raise a triable issue of fact (see *Domoroski v. Smithtown Ctr. For Rehabilitation & Nursing Care*, 95 AD3d 1165 [2d Dept. 2012]; see also *Gold v. Park Ave. Extended Care Ctr. Corp.*, 90 AD3d 833 [2d Dept. 2011]).

3. Liability for Negligence

Four Seasons motion for summary judgment dismissing plaintiff’s cause of action is granted, and plaintiff’s “Fifth” Cause of Action is severed and dismissed. Clove Lakes motion for summary judgment dismissing plaintiff’s “Second” Cause of Action for negligence is denied.

It has long been acknowledged that summary judgment deprives the litigant of his day in court and is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Andre v. Pomeroy*, 35 NY2d 361, 364 [1974]). To obtain summary judgment, a movant must establish its position “sufficiently to warrant the court as a matter of law in directing judgment” in its favor (*Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979], quoting CPLR 3212[b]). The proponent of a summary judgment motion must initially make *prima facie* showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to eliminate any genuine material issues of fact from the case (see *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If a *prima facie* showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof in admissible form to establish the existence of material issues of fact which require a trial (see *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

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A defendant moving for summary judgment in a medical malpractice action must make *prima facie* showing of entitlement to judgment as a matter of law by showing that “in treating the plaintiff, there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged” (*Roques v. Nobel*, 73 AD3d 204, 206 [1st Dept. 2010]; *Stukas v. Streiter*, 83 AD3d 18, 24 [2d Dept. 2011]). To satisfy the burden, defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific and factual in nature (*id.*; see also *Joyner-Pack v. Sykes*, 54 AD3d 727, 729 [2d Dept. 2008]). “Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Perre v. Vassar Bros. Hosp.*, 52 AD3d 670, 670 [2d Dept. 2008], quoting *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Once a defendant has met the burden on the motion, the plaintiff must “submit evidentiary facts or materials to rebut the *prima facie* showing by the defendant that it was not negligent in treating plaintiff, so as to demonstrate the existence of a triable issue of fact...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 [the physician’s] summary judgment motion” (*Alvarez v. Prospect Hospital*, 68 NY 320, 324-325 1986). Thus, in opposing the motion, plaintiff’s expert “must demonstrate ‘the requisite nexus between the malpractice allegedly committed’ and the harm suffered” (*Dallas-Stephenson v. Waisman*, 39 AD23d 303 [1st Dept. 2007, quoting *Ferrara v. South Shore Orthopedic Associates, P.C.*, 178 AD2d 364, 366 [1st Dept. 1991]). Moreover, plaintiff’s expert must address and refute the specific assertions of defendants’ experts with respect to negligence and causation (see *Janelle M. v. New York City Health & Hospitals Corp.*, 148 AD3d 519 [1st Dept. 2017]). “Where the expert’s

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ultimate assertions are speculative or unsupported by any evidentiary foundation the opinion should be given no probative force and is insufficient to withstand summary judgment” (*Diaz v. New York Downtown Hospital*, 99 NY2d 542, 544).

In applying the above principles, the Court finds that both Four Seasons and Clove Lakes have established entitlement to judgment as a matter of law dismissing plaintiff’s complaint by submitting, *inter alia*, the factually based and detailed affirmations of their experts Dr. Hernandez and Dr. Goldberg.

In opposition to Four Seasons’ motion, Dr. Schwartz fails to identify any pressure wound reduction measures that could have been put in place that would have changed decedent’s outcome, nor does he point to any medical test or evidence establishing a nexus between the pressure ulcers and her demise. References to the medical record are often incorrect.

In opposition to Clove Lakes’ motion, however, plaintiff has successfully raised a triable issue of fact sufficient to defeat summary judgment regarding, *e.g.*, Clove Lakes’ failure to implement a proper incontinence schedule. Here, Dr. Schwartz references the specific dates on which Mrs. Gallo’s briefs were left unchecked and unchanged. Thus, plaintiff has successfully raised a triable issue of fact as to whether Clove Lakes’ conduct was a proximate cause of the infected sacral ulcer suffered by plaintiff’s decedent.

Plaintiff’s cross motions for summary judgment are denied as moot.

Accordingly, it is

ORDERED that the motion for summary judgment of the Four Seasons (Motion Seq. No. 001) is granted in its entirety and plaintiff’s Fourth, Fifth and Sixth causes of action are severed and dismissed; and it is further

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ORDERED that the motion for summary judgment of the defendant Clove Lakes (Motion Seq. No. 002) is granted to the extent that the First and Third Causes of Action are severed and dismissed, and the balance of the motion is denied; and it is further

ORDERED that plaintiff's cross motions for summary judgment against Four Seasons and Clove Lakes (Motion Seq. Nos. 003, 004) are denied; and it is further

ORDERED that the Clerk is directed to enter judgment severing and dismissing plaintiff's complaint as against the defendant Four Seasons; and it is further

ORDERED that parties appear for a pre-trial conference via Microsoft Teams on **April 22, 2024 at 10:15 a.m.**

January 22, 2024

ENTER

Hon. Judith N. McMahon
J.S.C.