De Perez v Vincent

2024 NY Slip Op 35481(U)

August 13, 2024

Supreme Court, Queens County

Docket Number: Index No. 707208/2021

Judge: Tracy Catapano-Fox

Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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MARLENY ALTAGRACIA VINCENTE DE PEREZ,

Plaintiff,

-against-

SARAH VINCENT, M.D., M.P.H., MONICA KAPOOR, M.D., SOFYA KILSHTOK, M.D., and JAMAICA HOSPITAL MEDICAL CENTER,

Defendants.

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Index No. 707208/2021

Part MDP
Motion Date: July 24, 2024

Calendar No. 3
Sequence No. 4

The following papers numbered EF-88 to EF-127 read on this motion by defendants SARAH VINCENT, M.D., M.P.H. and JAMAICA HOSPITAL MEDICAL CENTER for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212, and this cross-motion by plaintiff for an Order precluding defendants from obtaining the benefits of CPLR Article 16.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits……	EF88-EF96
Notice of Cross-Motion, Affirmation, Exhibits……..	EF113-EF125
Reply Affirmation……......	EF126-EF127

Upon the foregoing papers, it is ordered that these motions are determined as follows:

Defendant Sarah Vincent, M.D., M.P.H.'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted, as defendant Dr. Vincent eliminated all triable issues of fact regarding whether she departed from accepted standards of care and proximately caused plaintiff's injuries. (*See Galluccio v. Grossman*, 161 A.D.3d 1049 [2d Dept. 2018].) Defendant Jamaica Hospital Medical Center's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted, solely to the extent that all direct claims against defendant Jamaica Hospital are dismissed. However, defendant Jamaica Hospital may still be held liable under a theory of vicarious liability for its employees or agents.

Defendants' motion for summary judgment and dismissal of plaintiff's claims of lack of informed consent as against them is granted.

Plaintiff's cross-motion for an Order precluding defendants from obtaining the benefits of CPLR Article 16 is denied as premature, with leave to renew as a motion *in limine* prior to jury selection.

Plaintiff commenced this medical malpractice action arising out of an episiotomy she underwent during the labor and delivery of her infant on May 3, 2019. Plaintiff filed the Summons and Complaint on March 29, 2021, and issue was joined by moving defendants via the filing of their Answers on June 14, 2021.

Defendants argue that they are entitled to summary judgment and dismissal of plaintiff's Complaint, and present the parties' deposition testimony, plaintiff's medical records, and the expert affirmation of Gary Mucciolo, M.D. in support of their motion. Defendants further argue that the evidence shows that they rendered care and treatment within the standard of care and did not proximately cause or contribute to plaintiff's injuries. Defendants also argue that defendant Dr. Vincent is entitled to summary judgment because she was a resident acting under the supervision, guidance, and direction of her attending physicians and did not exercise any independent judgment. Defendants also argue that there are no direct claims against Jamaica Hospital and its staff members and therefore all claims against defendant Jamaica Hospital must be dismissed. Defendants also argue that plaintiff's claims for lack of informed consent must be dismissed because plaintiff signed an informed consent form acknowledging she was informed of the risks, benefits, and alternatives of the vaginal delivery. Defendants further argue that a reasonably prudent patient in plaintiff's shoes would have agreed to undergo a vaginal delivery and episiotomy upon the emergent nature of the potential tear. Defendants further argue that a separate informed consent for an episiotomy was not necessary given the emergent nature of the procedure to prevent an impending third or fourth degree laceration.

Defendants present the affirmation of Dr. Gary Mucciolo in support of their motion. Dr. Mucciolo affirmed to being a physician licensed in New York and board certified in obstetrics and gynecology. Dr. Mucciolo further affirmed to reviewing the pleadings, plaintiff's Bills of Particulars and medical records, and the parties' deposition testimony in rendering his opinions. Dr. Mucciolo opined within a reasonable degree of medical certainty that defendants Dr. Vincent and Jamaica Hospital did not depart from the standard of care and did not proximately cause or substantially contribute to plaintiff's injuries.

In rendering his opinions, Dr. Mucciolo reviewed plaintiff's pertinent medical records and affirmed that on May 3, 2019 at approximately 7:33am, plaintiff presented to Jamaica Hospital for labor and delivery of her infant. Co-defendant Dr. Sofya Kilshtok assessed that plaintiff was in

active labor and planned to admit her to the Labor and Delivery unit for a vaginal delivery, for which plaintiff signed an informed consent form at 8:51am. The form was in Spanish and documents that a Language Line interpreter was used for the discussion with plaintiff. Co-defendant Dr. Monica Kapoor delivered the baby at 2:18pm via vaginal, spontaneous delivery. According to a medical note, the baby was delivered from the left occiput anterior position over a right mediolateral episiotomy that was performed to prevent an impending third or fourth degree laceration. Based upon Dr. Kapoor's deposition testimony, she decided to perform the episiotomy to protect the rectum and prevent an impending third or fourth degree laceration, because a spontaneous laceration could partially or completely transect the rectus muscle. Dr. Kapoor performed the episiotomy with Mayo scissors and cut an incision from the midline to lateral at a forty-five degree angle away from the anus. Dr. Kapoor further testified that upon inspecting the area she found no defects and immediately sutured the incision upon delivery. In the following days plaintiff had no complaints and she and her baby appeared to be stable. Dr. Kapoor testified that plaintiff's right mediolateral episiotomy repair was intact and plaintiff was discharged home. However, plaintiff testified that she began experiencing gastrointestinal issues the day after she was discharged from the hospital.

Based upon the foregoing, Dr. Mucciolo opined within a reasonable degree of medical certainty that Dr. Vincent and Jamaica Hospital staff members rendered care and treatment within the standard of care. Dr. Mucciolo further opined that Dr. Vincent was a resident acting under the supervision, guidance, and direction of her attending physicians at all times, including co-defendants Dr. Kilshtok and Dr. Kapoor, and did not exercise any independent medical judgment concerning plaintiff's care and treatment. Dr. Mucciolo further opined that Dr. Vincent's role was limited to assisting Dr. Kapoor with the delivery, and Dr. Kapoor made both the decision to perform the episiotomy and the incision. Dr. Mucciolo further opined that Dr. Vincent timely, properly, and appropriately assessed plaintiff when she presented to the hospital, ascertained her symptoms and medical history, performed plaintiff's medical examination, and communicated her findings to Dr. Kilshtok.

Dr. Mucciolo opined that Dr. Kilshtok appropriately decided to admit plaintiff to Labor and Delivery for a vaginal delivery because plaintiff was in active labor and a C-section was not indicated. Dr. Mucciolo reasoned that this was plaintiff's first pregnancy with no history of any prior C-sections or medical history that would warrant a C-section. Dr. Mucciolo also opined that it is within the standard of care to perform a right mediolateral episiotomy to expedite a difficult delivery or prevent severe maternal lacerations that can be caused by the stretching of the perineum from the baby's head. Dr. Mucciolo reasoned that a third degree laceration, a vaginal tear that extends into the sphincter, and a fourth degree laceration, a tear that extends into the anus, can be caused by stretching from the baby's head and can be prevented by the episiotomy. Dr. Mucciolo further opined that it was proper for Dr. Kapoor to perform the episiotomy to prevent an impending third or fourth degree laceration to plaintiff's perineum during the delivery. Dr. Mucciolo also

reasoned that Dr. Kapoor thoroughly and properly inspected the area both visually and with her fingers and found no extension of the incision, lacerations, or defects such as a fistula or fissure. He also opined that Dr. Kapoor appropriately sutured the perineum upon the baby's delivery on May 3, 2019. Dr. Mucciolo further reasoned that plaintiff reportedly was doing well after the delivery and no perineal defects were found during her post-delivery inspection on May 4, 2019 or at her discharge on May 5, 2019.

Dr. Mucciolo opined that plaintiff's informed consent was properly obtained, as plaintiff was appropriately informed of the risks and benefits of a vaginal delivery in Spanish, using Language Line. Dr. Mucciolo further reasoned that there is no evidence that plaintiff requested or wanted a C-section, and opined that no reasonable person in plaintiff's position would have refused consent to a natural delivery. Dr. Mucciolo further opined that the consent for the vaginal delivery included the consent to perform an episiotomy, as the consent includes possible damage to adjacent organs. Dr. Mucciolo also noted that obtaining separate "informed consent" for the episiotomy was not necessary due to the emergent nature of the possible third or fourth degree laceration.

Dr. Mucciolo also opined within a reasonable degree of medical certainty that defendants did not cause plaintiff's injuries. Dr. Mucciolo reasoned that there is no evidence that the incision extended towards plaintiff's anus or came into contact with the sphincter or anus. Dr. Mucciolo further reasoned that had the episiotomy caused an injury, the injury would have been apparent immediately after the delivery and recognized during the subsequent inspection. Dr. Mucciolo further reasoned that plaintiff's claimed injuries are secondary to the stretching of her sphincter during delivery, which is a natural consequence of a vaginal delivery. He further opined that plaintiff's claimed injuries are unrelated to the right mediolateral episiotomy performed by Dr. Kapoor. Based upon the foregoing, defendants argue that they are entitled to summary judgment and dismissal of plaintiff's Complaint.

Plaintiff opposes the motion and argues it should be denied because defendants failed to eliminate all triable issues of fact with respect to whether they departed from accepted standards of care and proximately caused or contributed to plaintiff's injuries. Plaintiff presents the medical records and an expert affirmation in support of her opposition and cross-motion. She argues that defendants failed to present a prima facie entitlement to summary judgment, as defendant's expert opinions are conclusory and speculative and failed to challenge plaintiff's claim that defendants should have timely and properly conducted a digital rectal examination prior to repairing the episiotomy during delivery. Plaintiff also argues that her expert's affirmation raises triable issues of material fact and opinions in conflict with defendants' expert that preclude summary judgment.

Plaintiff also cross-moves to preclude defendants from obtaining the trial benefits of CPLR Article 16. She argues that defendants should not be permitted to obtain the benefits of CPLR Article 16 for any defendant who moves for, and is granted, summary judgment because the

determination in favor of summary judgment precludes a jury from apportioning liability.

Plaintiff presents the affirmation of a physician licensed in New York and board certified in obstetrics and gynecology. Plaintiff's expert affirmed to reviewing the pleadings, the parties' deposition testimony, plaintiff's medical records, and the defense expert affirmation of Dr. Gary Mucciolo in rendering opinions related to this action. Plaintiff's expert opined to a reasonable degree of obstetric and gynecological certainty that defendants Sarah Vincent, M.D., M.P.H., Monica Kapoor M.D., and Jamaica Hospital Medical Center individually and through their agents were careless, negligent, and departed from the standards of good and accepted medical practice as they existed in 2019. Plaintiff's expert further opined that they departed from accepted standards of care by failing to adequately, properly, and timely perform a digital rectal examination, failed to recognize a defect of the vaginal and rectal mucosa, and failed to adequately, properly, and timely repair the defect during or shortly after plaintiff's vaginal delivery. Plaintiff's expert further opined that the standard of care required defendants to perform a thorough digital rectal examination prior to performing the episiotomy, after the incision but prior to closing the incision, and after completion of the episiotomy. Plaintiff's expert further opined that had this been done at all three stages, defendants would have identified a buttonhole defect at the anterior anal wall. Plaintiff's expert further opined that defendants departed from the standard of care by failing to timely and properly treat the buttonhole defect. Plaintiff's expert further opined that defendants' departures proximately caused plaintiff's injuries that did not exist prior to her admission to Jamaica Hospital, including a persistent buttonhole defect, a rectovaginal fistula, fecal incontinence, a diminished quality of life and ability to perform activities of daily living, and substantial pain and suffering.

Plaintiff's expert reviewed plaintiff's pertinent medical history and disagreed with Dr. Mucciolo's characterization of the records. Contrary to Dr. Mucciolo's opinion that plaintiff was doing well after the delivery, plaintiff's expert affirmed that the Jamaica Hospital records show plaintiff complained of pain and discomfort on May 3, 2019 after the delivery and the following day. On May 5, 2019 prior to her discharge, mild edema/erythema of plaintiff's perineum was noted. On May 6, 2019, plaintiff first experienced fecal incontinence and five days later she returned to Jamaica Hospital with a rash covering her abdomen and legs. On May 23, 2019, plaintiff presented to Modern Urgent Care complaining of discomfort at the episiotomy suture site. The sutures were removed and plaintiff was given a prescription for a topical antibacterial cream. On June 11, 2019 plaintiff returned to Jamaica Hospital for her six-week postpartum care visit and was diagnosed with disruption of perineal wound. She presented to Jamaica Hospital for another postpartum care visit on June 20, 2019 and was again noted to have disruption of perineal wound with burning and pain in her vagina. On June 27, 2019 she had an IUD inserted and on August 15, 2019 she had an appointment for a post IUD-insertion checkup. During the August visit she complained of fecal incontinence with gas and stool leaking, and explained that she thought it was a normal consequence of childbirth. During the appointment, she was diagnosed with anal

sphincter incompetence. Plaintiff presented to a colorectal surgeon on September 19, 2019, a gastroenterologist on September 24, 2019, and for an anorectal manometry on October 14, 2019. Plaintiff returned to the surgeon on November 19, 2019 for a follow up and presented to Northwell Health on December 5, 2019 for a pelvic MRI that showed the existence of a rectovaginal fistula.

Based upon the above, plaintiff's expert opined within a reasonable degree of medical certainty that defendants departed from good and accepted medical practice by failing to timely and properly perform a digital rectal examination, and by failing to timely and properly diagnose and treat plaintiff's buttonhole defect in the perineal area separating the vaginal wall from the rectum, thereby causing plaintiff to suffer a rectovaginal fistula and subsequent side effects. Plaintiff's expert explained how an episiotomy is performed and that prior to the procedure, it is necessary to conduct a visual inspection of the area and perform a digital rectal examination to exclude lacerations and isolated rectal buttonhole tears regardless of whether the perineum appears to be intact. Plaintiff's expert further reasoned that another digital rectal examination must be done after the incision but before it is sutured, and again after the procedure. Plaintiff's expert opined that not performing a digital rectal examination at all three stages is a departure from good and accepted medical practice and would greatly hinder the ability to detect a defect. Plaintiff's expert explained a proper episiotomy with proper checks step-by-step and reasoned that was not done here, as defendants missed an essential step in the three-part digital rectal examination, if performed at all.

Plaintiff's expert also explained that a buttonhole tear or defect is a laceration of rectal mucosa and the vagina. Plaintiff's expert further explained that it is rare and most often occurs in cases that involve a complication such as instrumented delivery, fetal distress, breach, or emergent circumstances. Plaintiff's expert also explained that a buttonhole defect often presents with an intact perineum at delivery, however, if a proper digital rectal examination is performed at all three required stages, it is immediately identified after delivery. Plaintiff's expert further explained that if it is not timely recognized and treated, it can lead to infection that impairs healing and prevents the defect from closing, which can lead to a rectovaginal fistula. Based upon the foregoing, plaintiff's expert opined within a reasonable degree of obstetric and gynecologic certainty that the standards of good and accepted practice require prompt surgical treatment of the buttonhole defect prior to discharging the patient from the hospital. Plaintiff's expert further opined that with proper treatment, a patient who suffered a buttonhole defect is typically asymptomatic within six weeks of delivery.

Plaintiff's expert also explained that a rectovaginal fistula is an abnormal epithelial-lined connection between the rectum and vagina that allows gas and feces to be passed from the rectum through the vagina. Plaintiff's expert explained that a rectovaginal fistula is most frequently the result of obstetric injury and in the present case would only form when a communication between the vagina and rectum has been created. Plaintiff's expert therefore opined that plaintiff suffered

a rectovaginal fistula and fecal incontinence as a result of the undetected buttonhole defect and had the defect been appropriately detected through a proper digital rectal examination, it would have been repaired and plaintiff would not have suffered a rectovaginal fistula. Plaintiff's expert also opined that based upon plaintiff's deposition testimony and the medical records from subsequent treating providers, her history and symptoms including involuntarily passing stool days after her delivery demonstrate that the buttonhole defect was present at the time of her post-delivery examination on May 3, 2019. The expert further opined that the standard of care required the defect to be diagnosed prior to leaving the patient after performing the episiotomy, and had the buttonhole defect been timely and properly diagnosed, the standards of good and accepted practice required the buttonhole defect to be treated surgically prior to plaintiff's discharge on May 5, 2019. The expert further opined that the standards of good and accepted practice required plaintiff to start a course of prophylactic antibiotics for the treatment of the buttonhole defect. Based upon the foregoing, plaintiff argues that defendants' motion should be denied.

Pursuant to CPLR §3212, a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (*Smith v. City of New York*, 210 A.D.3d 53, 68 [2d Dept. 2022].) The proponent of a summary judgment motion 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. (*Morejon v. New York City Tr. Auth.*, 216 A.D.3d 134, 136 [2d Dept. 2023].) If there is any doubt as to the existence of a triable issue of fact, the motion must be denied. (*Id.*) The failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposition papers. (*Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *see also Antonyuk v. Brightwater Towers Condo Homeowners' Assn., Inc.*, 147 A.D.3d 711, 712 [2d Dept. 2017].) In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party. (*Matter of New York City Asbestos Litig.*, 33 N.Y.3d 20, 25 [2019].) Additionally, the court's function in determining a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. (*Reyes v. S. Nicolia & Sons Realty Corp.*, 212 A.D.3d 851, 852-853 [2d Dept. 2023].) Once the moving party has demonstrated a prima facie entitlement to summary judgment, the burden then shifts to the non-moving party to demonstrate the existence of material issues of fact. (*See generally Coscia v. Mosca*, 203 A.D.3d 695 [2d Dept. 2022].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff

is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff's claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].) In general, a hospital may be vicariously liable for the negligence or malpractice of its employees acting with the scope of employment under the doctrine of *respondeat superior*. (*Valerio v. Liberty Behavioral Mgt. Corp.*, 188 A.D.3d 948, 949 [2d Dept. 2020].)

A medical resident cannot be held liable for malpractice for assisting a doctor during a medical procedure, if the resident does not exercise any independent medical judgment and so long as the supervising doctor's directions did not greatly deviate from normal practice that the resident should be liable for failure to intervene. (*Quille v. New York City Health & Hosp. Corp.*, 152 A.D.3d 808, 809 [2d Dept. 2017].)

To establish a cause of action to recover damages based upon lack of informed consent, a plaintiff must prove "(1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury." (*Gilmore v. Mihail*, 174 A.D.3d 686, 688 [2d Dept. 2019].)

CPLR §1601 limits the liability of a defendant in a personal injury action for non-economic loss in excess of the equitable share of that defendant if that defendant's equitable share of the total liability is 50% or less.

Defendant Dr. Vincent established a prima facie entitlement to summary judgment, and defendant Jamaica Hospital established a prima facie entitlement to summary judgment with respect to the direct claims against it. Defendants demonstrated through their production of the documentary evidence and affirmation of Dr. Mucciolo that they rendered care and treatment to plaintiff within the standard of care and did not proximately cause plaintiff's injuries. Defendants demonstrated Dr. Vincent was a first year resident acting under the direction, supervision, and control of co-defendants Dr. Kapoor and Dr. Kilshtok, who were attending physicians at Jamaica Hospital. They also demonstrated that Dr. Vincent did not exercise any independent medical judgment that would expose her to liability. Defendants further demonstrated through Dr. Mucciolo's expert affirmation that co-defendants Dr. Kapoor and Dr. Kilshtok did not greatly deviate from the standard of care, so much so that defendant Dr. Vincent may be held liable based upon a failure to intervene. Defendants further demonstrated through Dr. Mucciolo's affirmation

that as a resident, Dr. Vincent took plaintiff's relevant information and did not perform the episiotomy or make any decisions regarding the episiotomy. Defendants also demonstrated that plaintiff's informed consent was properly obtained prior to the delivery and that given the emergent nature of the potential third or fourth degree laceration, it was not reasonable to obtain separate informed consent for the episiotomy. Based upon the foregoing, defendants established a prima facie entitlement to summary judgment.

Plaintiff failed to raise a triable issue of fact in dispute. Plaintiff's expert affirmation failed to acknowledge and specifically rebut Dr. Mucciolo's opinions and assertions with regard to Dr. Vincent. (*See Mackauer v. Parikh*, 148 A.D.3d 873, 876 [2d Dept. 2017][holding that when a defendant makes a prima facie showing, the burden then shifts to the plaintiff to submit evidentiary facts or materials to rebut the defendant's prima facie showing].) Here, plaintiff's expert neither addressed Dr. Mucciolo's affirmation nor rendered opinions specifically with respect to Dr. Vincent and her status as a first year resident, but generally includes Dr. Vincent with co-defendants in asserting departures from the standard of care. Plaintiff's expert also failed to present any opinions with regard to direct claims against Jamaica Hospital, but merely asserts opinions regarding departures by Dr. Kapoor and Dr. Kilshtok for which Jamaica Hospital would only be potentially vicariously liable. Plaintiff's expert also failed to render opinions with respect to plaintiff's informed consent claim, as the expert failed to present evidence that defendants did not inform plaintiff of the risks, benefits and alternatives of a vaginal delivery. Based upon the foregoing, plaintiff's expert failed to raise triable issues of material fact as to Dr. Vincent and direct claims against Jamaica Hospital.

Accordingly, defendant Sarah Vincent, M.D., M.P.H.'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. Defendant Jamaica Hospital Medical Center's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted, solely to the extent that all direct claims against defendant Jamaica Hospital are dismissed and plaintiff's claims of lack of informed consent against Dr. Vincent and directly against Jamaica Hospital are dismissed. However, defendant Jamaica Hospital may still be held liable under a theory of vicarious liability for its employees or agents. Plaintiff's cross-motion for an Order precluding defendants from obtaining the benefits of CPLR Article 16 is denied as premature, with leave to renew as a motion *in limine* prior to jury selection. It is hereby

ORDERED that plaintiff's Complaint is dismissed as to defendant SARAH VINCENT, M.D., M.P.H., and it is further

ORDERED that plaintiff's direct claims against defendant JAMAICA HOSPITAL MEDICAL CENTER are dismissed, and it is further

ORDERED that plaintiff's claim for lack of informed consent is dismissed as to defendants SARAH VINCENT, M.D., M.P.H and JAMAICA HOSPITAL MEDICAL CENTER, and it is further

ORDERED that the parties shall appear for a pretrial conference on Wednesday, August 28, 2024 at 9:30 am in Courtroom 48.

This constitutes the decision and Order of the Court.

Dated: August 13, 2024

Hon. Tracy Catapano-Fox, J.S.C.