Grossman v Rutman
2024 NY Slip Op 35666(U)
December 19, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 621626/2017
Judge: Joseph Farneti

SHORT FORM ORDER

INDEX No. 621626/2017
CAL. No. 202301779MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 37 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH FARNETI
Acting Justice of the Supreme Court

MOTION DATE 4/4/24 (008,012)
MOTION DATE 4/18/24 (009,010,011,013-018)
ADJ. DATE 9/12/24
Mot. Seq. # 008 MG
Mot. Seq. # 009 MG
Mot. Seq. # 010 MG
Mot. Seq. # 011 MD
Mot. Seq. # 012 MG
Mot. Seq. # 013 MG
Mot. Seq. # 014 MG
Mot. Seq. # 015 MG
Mot. Seq. # 016 MD
Mot. Seq. # 017 MD
Mot. Seq. # 018 MG

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KIMBERLY GROSSMAN as Administrator of the Estate of ANNMARIE NORELIUS, Deceased,

Plaintiff,

- against -

MATTHEW C. RUTMAN, M.D., SHUG HONG YOUNG, M.D., ST. CHARLES HOSPITAL AND REHABILITATION CENTER, CATHOLIC HEALTH SYSTEM OF LONG ISLAND, INC., SANJIV SHARMA, M.D., ADVANTAGECARE PHYSICIANS, P.C., QUEENS-LONG ISLAND MEDICAL GROUP, P.C., MICHAEL ALAN LEE, M.D., PREETI CHANDRA, M.D., SAARON LAIGHOLD, M.D., OPKAR CHAWLA, M.D., VIJAY SHAH, M.D., VIJAY SHAH, PHYSICIAN, P.C., SARAH ARZT, D.O., SARAH ARZT, D.O., P.C., SHAHRAM HORMOZI, M.D., SHAHRAM HORMOZI, M.D., P.C., RAZIA JAYMAN-ARISTIDE, M.D., MOSES AUGUSTUS WILLIAMS, M.D. and WILLIAM M. KAINZBAUER, M.D.,

Defendants.

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Upon the following papers read on this e-filed motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 008) by defendant Dr. Young filed March 4, 2024; Replying Affidavits and supporting papers filed September11, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 009) by defendant Dr. Lee filed March 5, 2024; Replying Affidavits and supporting papers filed September 11, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 010) by defendants Dr. Rutman, St. Charles Hospital, and Catholic Health filed March 6, 2024; Replying Affidavits and supporting papers filed September 6, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 011) by Dr. Chawla, ACP and Queens-Long Island filed March 6, 2024; Answering Affidavits and supporting papers by plaintiff filed August 8, 2024 ; Replying Affidavits and supporting papers filed September 9, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 012) by defendant Dr. Arzt filed March 8, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 013) by defendant Dr. Hormozi filed March 13, 2024; Replying Affidavits and supporting papers filed September 11, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 014) by defendants Dr. Laighold and Dr. Aristide, filed March 13, 2024; Replying Affidavits and supporting papers filed September 6, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 015) by defendants Dr. Williams and Dr. Kainzbauer filed March 14, 2024; Replying Affidavits and supporting paper filed September 5, 2024; Notice of Motion/Order to Show Cause and supporting papers(mot. seq. 016) by defendant Dr. Sharma filed March 14, 2024; Answering Affidavits and supporting papers by plaintiff filed August 8, 2024; Replying Affidavits and supporting papers filed September 11, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 017) by Dr. Shah filed March 15, 2024; Answering Affidavits and supporting papers by plaintiff filed August 8, 2024; Replying Affidavits and supporting papers filed September 9, 2024; Notice of Motion/Order to Show Cause and supporting papers (mot. seq. 018) by Dr. Chandra filed March 19, 2024; Replying Affidavits and supporting papers filed September 5, 2024; it is

ORDERED that these motions are consolidated for the purposes of this determination; and it is

ORDERED that the motion of defendant Shug Hong Young, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is

ORDERED that the motion of defendant Michael Lee, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendants Matthew Rutman, M.D., St. Charles Hospital and Rehabilitation Center, and Catholic Health System of Long Island, Inc. pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendants Opkar Chawla, M.D., and Advantage Care Physicians, P.C. pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is denied; and it is further

ORDERED that the motion of defendant Sarah Arzt., M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendants Shahram Hormozi, M.D., and Shahram Hormozi, M.D., P.C. pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendants Saaron Laighold, M.D., and Razia Jayman-Aristide, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendants Moses Williams, M.D., and William Kainzbauer, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted; and it is further

ORDERED that the motion of defendant Sanjiv Sharma, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is denied; and it is further

ORDERED that the motion of defendants Vijay Shah, M.D., and Vijay Shah, Physician, P.C. pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is denied; and it is further

ORDERED that the motion of defendant Preeti Chandra, M.D., pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint is granted.

Plaintiff, as the administrator of the estate of decedent Annmarie Norelius, commenced this action to recover damages for the alleged medical malpractice of the defendants, and for decedent's wrongful death. The decedent had a history of deep vein thrombosis (DVT) and pulmonary embolism (PE), and she was treated by various physicians for the condition between July 14, 2014, and July 15, 2015. Plaintiff alleges that the defendant health care providers, *inter alia*, inappropriately discontinued critical medications, failed to communicate the proper therapy to the decedent, and failed to prescribe appropriate medication to her. Plaintiff complains that the defendants departed from good accepted standards of medical care, and that their actions caused the decedent's death.

Several of the defendants have moved for summary judgment dismissing the complaint as alleged against them. All of the moving defendants assert that they did not depart from accepted standards of medical care, and each proffer the affirmation of an expert physician in support of their respective motion. Plaintiff opposes the motions of three moving defendants with the affirmation of her own expert physician. The court will first address the summary judgment motions that are unopposed.

The record shows that in July 2012, the decedent was diagnosed with PE, which occurs when a blood clot dislodges from a vein, travels through the blood stream, and lodges in the lung. She had a family history of the condition, and she started receiving treatment from healthcare providers at defendant Advantage Care Physicians, P.C. (ACP) (also sued herein as Queens-Long Island Medical Group) in 2013. Beginning in 2013, the decedent was primarily treated by defendant Dr. Michael Lee, who prescribed anticoagulation (warfarin sodium/Coumadin) treatment and therapy, requiring the decedent to undergo routine blood testing to monitor her blood clotting levels (INR). The decedent followed the treatment protocol while under Dr. Lee's care, and in February 2014, her radiological studies showed no DVT or PE. The decedent continued her treatment with warfarin through May 2014, and Dr. Lee adjusted the medication dosage based on her INR levels. In June 2014, the decedent started treating with defendant Dr. Opkar Chawla, and testing showed that her INR was 1.2 on June 5. Dr. Chawla continued the decedent's use of warfarin. On June 19, cardiologist defendant Dr. Preeti Chandra performed a physical exam of the decedent and recommended an echocardiogram, among other tests. The test results were within normal limits. On June 27, Dr. Chawla referred the decedent to a hematologist and a pulmonologist to assess her continued use of warfarin inasmuch as she had been

using the medication since 2012. Dr. Chawla renewed the prescription for the medication during the evaluation period with the specialists, prescribing a 90-day supply.

On July 8, hematologist defendant Dr. Vijay Shah examined the decedent and ordered a number of laboratory studies. He informed the decedent of the risks of continued use of warfarin, and noted that the decedent wanted to continue the treatment. Pulmonologist defendant Dr. Sanjiv Sharma also examined the decedent, and recommended radiological and blood testing. He noted that if the decedent's "work up" was "negative," then she may discontinue anticoagulation, provided that her hematologist agreed that she did not have a "hypercoagulable state." After the decedent's visit with Dr. Sharma, Dr. Shah saw the decedent a second time, and noted that there was "no anticoagulation indication on hematology standpoint if no current evidence of thromboembolism." The note further stated that "anticoagulation decision is as per pulmonary/pcp." At a visit with Dr. Chawla on July 30, 2024, Dr. Chawla noted that the decedent was "on wafarin 3 mg" and to "follow INRs closely." Dr. Chawla further indicated that the decedent's hematology work up was "in progress," and that she should follow up with "surgery" as soon as possible regarding an abnormal mammogram. The following day, the decedent presented to ACP for a surgical consult. It appears that the decedent was not seen at ACP between July 30 and November 5, 2014.

On November 5, 2014, the decedent presented to ACP complaining of leg pain, shortness of breath, and bruising on her legs, and she was examined by physician assistant Barbara Mawhirt. Mawhirt's note stated, in part, that the decedent was "taken off Coumadin [warfarin in] August," that she had a "lapse in insurance," and that she had "not followed up with cardio or PCP." Mawhirt instructed the decedent to "go to the ER now for further evaluation and then follow up with pcp." The decedent presented to the emergency department of St. Catherine of Siena Medical Center (SCSMC) on November 6, and testing ruled out PE and DVT. A note from SCSMC stated that the decedent had a history of DVT and PE and that she was "on Coumadin [warfarin] until 7/14."

On January 6, 2015, the decedent presented to defendant St. Charles Hospital complaining of chest pain and shortness of breath, and a CT angiogram was negative for PE. The following day, the decedent presented to ACP and was examined by Dr. Sharma, who referred her for a repeat venous duplex of her legs, and instructed her to return in three weeks. On January 14, the decedent collapsed at home and was transported to South Side Hospital, where she was pronounced dead. An autopsy revealed that her cause of death was pulmonary thromboembolism as a result of DVT.

The crux of plaintiff's complaint is that the physicians who cared for the decedent negligently discontinued her used of anticoagulation medication, which resulted in her death. "The essential elements of medical malpractice are (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury" (***Ciceron v Gulmatico***, 220 AD3d 732, 734, 197 NYS3d 556 [2d Dept 2023]). To make a prima facie showing of entitlement to summary judgment in an action to recover damages for medical malpractice, a defendant must establish an absence of any departure from good and accepted standards of medical care, or that even if there was a departure, the plaintiff was not injured thereby (***Gruen v Brathwaite***, 215 AD3d 927, 928, 187 NYS3d 313 [2d Dept 2023]; ***Ciceron v Gulmatico***, 220 AD3d 732, 734, 197 NYS3d 556; *see* ***Castro v New York City Health & Hosps. Corp.***, 74 AD3d 1005, 903 NYS2d 152 [2d Dept 2010]; ***Deutsch v***

Chaglassian, 71 AD3d 718, 896 NYS2d 431 [2d Dept 2010]). To satisfy this burden, the defendant must present expert opinion testimony that is supported by facts in the record and addresses the essential allegations in the bill of particulars (***Weintroub v Maimonides Med. Ctr.***, 222 AD3d 915, 916, 202 NYS3d 269 [2d Dept 2023]; ***Ward v Engel***, 33 AD3d 790, 822 NYS2d 608 [2d Dept 2006]). Once this burden is satisfied, the burden shifts to the plaintiff to raise a triable issue of fact as to whether a departure from good and accepted practice occurred and whether this departure was a proximate cause of his or her injuries (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Dien v Seltzer***, 116 AD3d 910, 984 NYS2d 129 [2d Dept 2014]). "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 defendant physician's summary judgment motion" (***Bowe v Brooklyn United Methodist Church Home***, 150 AD3d 1067, 1067-1068, 56 NYS3d 108 [2d Dept 2017]; *see* ***Corujo v Caputo***, 224 AD3d 729, 730, 205 NYS3d 174 [2d Dept 2024]; ***Getselevich v Ornstein***, 219 AD3d 1493, 1494, 196 NYs3d 515 [2d Dept 2023]).

With respect to the unopposed motion of Dr. Shug Hong Young, he avers that he reviewed the decedent's EKG that was performed at St. Charles Hospital on January 6, 2015. Dr. Young states that he had no contact with the decedent, and that his review was to ensure the accuracy of the test. Dr. Young has met his burden on the motion, and the claims against him are dismissed.

Dr. Lee has met his burden to show that he did not depart from the standard of care in treating the decedent. Dr. Lee's expert physician, Dr. Brian Feingold, opines that Dr. Lee appropriately prescribed warfarin to treat the decedent's condition, and that he continued her use of the medication through May 2014, when he last saw the decedent. Plaintiff has failed to raise an issue of fact in opposition, and the motion is granted.

Defendants Dr. Matthew Rutman, St. Charles Hospital and Rehabilitation Center, and Catholic Health System of Long Island, Inc. (collectively, St. Charles defendants) have met their prima facie burden dismissing plaintiff's claims against them. Their expert physician, Dr. Gregory Mazarin, affirms that when the decedent presented to the hospital on January 6, 2015, she received appropriate care based on her complaints. Dr. Rutman performed tests to rule out PE, and she was discharged with instructions to follow-up with a cardiologist and her primary care physician. Plaintiff does not oppose the motion; therefore, it is granted.

Defendant Dr. Sarah Arzt avers that when the decedent presented at St. Catherine Siena Medical Center in November 2014, she was the attending physician. Dr. Arzt states that she did not see the decedent during that visit and that her role was to review notes in the decedent's chart and to co-sign the notes. Dr. Arzt has demonstrated her entitlement to judgment as a matter of law dismissing the claims against her, and plaintiff does not oppose her motion. The claims against Dr. Arzt are dismissed.

Defendants Dr. Shahram Hormozi and Shahram Hormozi, M.D., P.C. have also demonstrated their entitlement to judgment as a matter of law dismissing the complaint as alleged against them. Dr. Hormozi affirms that his role in the decedent's care was to review the EKG on November 6, 2014. The unopposed motion is granted.

Similarly, defendants Dr. Saaron Laighold and Dr. Razia Jayman-Aristide have met their burden to show that they did not depart from good and accepted standards of care when they treated the decedent. The defendants' expert physician, Dr. Edward Katz, affirms that Dr. Laighold properly performed stress tests of the decedent in June 2014 and communicated the results to the decedent's treating physicians. Dr. Katz further affirms that Dr. Jayman-Aristide was not involved in the decedents care at any point. The unopposed motion is granted, and the claims against Dr. Laighold and Dr. Jayman-Aristide are dismissed.

Defendants Dr. Moses Williams and Dr. William Kainzbauer were radiologists that reviewed the decedent's imaging studies performed on November 6, 2014. The doctors have established their entitlement to judgment as a matter of law dismissing the claims against them. Expert physician Dr. Michael Obedian affirms that Dr. Williams and Dr. Kainzbauer properly reviewed the imaging, and that neither doctor departed from the accepted standard of care. Accordingly, the unopposed motion is granted.

In support of her motion, Dr. Preeti Chandra submits the affirmation of expert Dr. Michael Phillips, in which he opines that the care and treatment that Dr. Chandra rendered to the decedent in June 2014 was limited to examining the decedent, performing a stress test and an EKG, and reviewing the results of her echcocardiogram. According to Dr. Phillips, the treatment rendered by Dr. Chandra did not involve the use of anticoagulation therapy, and she did not depart from accepted standards of medical care in her encounter with the decedent. Dr. Chandra met her prima facie burden on the motion, and, inasmuch as plaintiff does not oppose Dr. Chandra's position, the motion is granted.

With respect to Dr. Chawla and ACP (collectively, ACP defendants), in support of their motion for summary judgment they submit the affirmation of Dr. Preston Winters, who is board certified in internal medicine. Dr. Winters states that Dr. Chawla saw the decedent two times while practicing at ACP. According to Dr. Winters, at the first visit, it was within the standard of care for Dr. Chawla to obtain consultations to evaluate the risks and benefits of the decedent continuing to use warfarin, and that "testing was specifically ordered" to inform a decision on whether the decedent should continue the medication. At the decedent's second visit with Dr. Chawla, the decedent was advised to follow-up with hematology, and Dr. Chawla ordered that the decedent discontinue certain medications, including hydrocodone. Dr. Winters states that Dr. Chawla did not include any order or recommendation that the decedent discontinue warfarin. He states that Dr. Chawla did not see the decedent after the July 2014 visit. Dr. Winters further opines that ACP physicians and specialists who evaluated the decedent did not make any decision to stop anticoagulant therapy, inasmuch as the decedent had not completed the testing that she was directed to undergo.

Through the affirmation of Dr. Winters, the ACP defendants have established their entitlement to judgment as a matter of law with respect to the claims against Dr. Chawla. Plaintiff must raise an issue of fact to defeat the motion (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923).

In opposition, plaintiff submits the affirmation of her own expert physician, in which the doctor opines that because Dr. Chawla requested the evaluation of plaintiff's continued use of warfarin, "it is [] a logical conclusion that Dr. Chawla was the individual who ordered the discontinuance of [the

medication] and communicated this to the patient." The expert states that based on the decedent's family and medical history, she should have been continued on the anticoagulation medication indefinitely, and that Dr. Chawla, along with the pulmonologist and hematologist, "either concurrently, or independently, discontinued" the medication, which was against the standard of care. Furthermore, the expert opines that even if Dr. Chawla did not direct the decedent to stop using warfarin, Dr. Chawla had a duty to ensure that the decedent continued to use the medication, and that he departed from the standard of care by failing to do so.

The affirmation of plaintiff's expert physician raises an issue of fact whether Dr. Chawla departed from the standard of care (*see* ***Alvarellos v Tassinari,*** 222 AD3d 815, 819, 201 NYS3d 489 [2d Dept 2023]). Plaintiff's expert opines that the decedent stopped taking the anticoagulation medication in July or August 2014 while she was under Dr. Chawla's care. The expert states that the decedent's medical records show that she stopped undergoing therapies for her condition, without a complete assessment, after the evaluation that Dr. Chawla ordered. The expert further opines that Dr. Chawla had duty to ensure that the decedent continued using the medication until all testing was completed. The conflicting opinions of the expert physicians create an issue of fact that must be resolved at trial (***Barnett v Fashakin***, 85 AD3d 832, 835, 925 NYS2d 168 [2d Dept 2011]). Accordingly, the motion of the ACP defendants is denied.

Next, Dr. Sharma moves for summary judgment dismissing the plaintiff's claims against him, and in support of his motion he submits an affirmation of Dr. Edward Eden, a board certified pulmonologist. Dr. Eden opines that Dr. Sharma appropriately assessed whether the decedent should stop the anticoagulation treatment, and that he adhered to the standard of care by ordering a complete "workup" to make a determination. Dr. Eden opines that Dr. Sharma did not make a final decision whether the decedent should discontinue warfarin because the decedent had not completed the studies that she was directed to complete, and he describes Dr. Sharma's recommendation that the decedent could stop use of the medication provided her hematologist agreed as "conditional." Dr. Eden states that Dr. Sharma acted appropriately, and that he did not depart from the standard of care.

Plaintiff raises an issue of fact in opposition (***Martins v Fontanetta***, 205 AD3d 798, 800, 168 NYS3d 110 [2d Dept 2022]). Plaintiff's expert physician opines that it was a departure from the standard of care for Dr. Sharma to recommend discontinuance of the medication if "Duplex US were negative." The expert opines that Dr. Sharma was required to perform an assessment of the decedent's "risks of development of clotting," and to assess her bleeding risks before he made such a recommendation. Based on the foregoing, Dr. Sharma's motion for summary judgment dismissing the complaint as alleged against him is denied.

Similarly, the court finds that there is an issue of fact whether Dr. Shah departed from the standard of care; therefore, his motion is denied. Although Dr. Shah's expert physician, Dr. Paul Bader, opines that Dr. Shah did not depart from the standard of care by recommending that there was "no hematological indication for continued anticoagulation therapy," plaintiff's expert opines that Dr. Shah was required to wait "until all relevant testing was completed" before he made a determination that the decedent could discontinue the anticoagulation medication. The plaintiff's expert opines that based on the decedent's medical history of "unprovoked PE, and low risk of bleeding," from a hematological

standpoint, the decedent should have continued anticoagulation medication indefinitely (*see* ***Hayden v Gordon***, 91 AD3d 819, 821, 937 NYS2d 299 [2d Dept 2012]).

Dated: 12/19/2024

A.J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**

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