SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING **PART** 06

Justice

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HERBERT FREEDMAN,

Plaintiff,

- v -

WILLIAM R. SLATER, MD., and NYU LANGONE HEALTH SYSTEM

Defendants.

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INDEX NO. 805162/2018

MOTION DATE 12/08/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing papers and oral arguments having been heard, Defendants William R. Slater, M.D. ("Dr. Slater") and NYU Langone Health System s/h/a NYU Langone Health System d/b/a NYU Cardiology Associates ("NYU Langone Health System") (collectively "Defendants") move for an order granting summary judgment, pursuant to CPLR 3212, dismissing the Plaintiff's complaint with prejudice, and directing the clerk to enter judgment in their favor.

Plaintiff, Herbert Freedman, (hereinafter "Mr. Freedman"), opposes the motion.

BACKGROUND

In this medical malpractice action, Plaintiff alleges that Dr. Slater, and vicariously NYU Langone Health System, negligently discontinued Effient, an anti-platelet medication, as part of Dual Antiplatelet Therapy ("DAPT") after one year of use following cardiac stenting and failed to provide a suitable alternative. Plaintiff also alleges a lack of informed consent and claims that Dr. Slater failed to explain the risks, benefits, and alternatives of discontinuing said medication. Plaintiff claims that had he been fully informed of all treatment options and associated risks, he

would not have consented to Dr. Slater's chosen course of treatment. Plaintiff also alleges that as a result of the alleged malpractice, he experienced myocardial infarction and total occlusion of an artery secondary to stent thrombosis, reduced ejection fraction, and required further medical treatment, including cardiac catheterization and angioplasty.

SUMMARY JUDGMENT AS TO MEDICAL MALPRACTICE

A defendant doctor establishes prima facie entitlement to summary judgment when he/she establishes 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 (*Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2009]; *Myers v Ferrara*, 56 AD3d 78, 83 [2008]; *Germaine v Yu*, 49 AD3d 685 [2008]; *Rebozo v Wilen*, 41 AD3d 457, 458 [2007]; *Williams v Sahay*, 12 AD3d 366, 368 [2004]). To satisfy this burden, a defendant physician 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 (*see Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Joyner-Pack v. Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]).

In support of their motion, the Defendants proffer the expert affirmation of Dr. Henry Cabin, M.D. (hereinafter "Dr. Cabin"), a board-certified cardiologist, who opines to a reasonable degree of medical certainty, that the medical records, established medical research, and relevant literature substantiate the appropriateness of Dr. Slater's decision to discontinue Effient on November 19, 2015, which occurred approximately one year following the Plaintiff's cardiac catheterization and the placement of two drug-eluting stents, while maintaining Aspirin as single antiplatelet therapy. Dr. Cabin opines that the standard of care is to discontinue DAPT after one

year, as set forth in the 2014 Guidelines cited by Dr. Slater at his deposition. Dr. Cabin indicates that other factors contributing to Dr. Slater's appropriate recommendation included the Plaintiff's age (75) and the FDA black box warning regarding the use of Efficient in patients at or over age 75. Further, he opines that the continuation of Efficient beyond the 12-month mark is specifically contraindicated, and it would have been a departure from the standard of care to continue Plaintiff on Effient. He opines that the recommendation to discontinue Effient and to continue Aspirin as single platelet therapy was appropriate and was made with the understanding of the risk of stent thrombosis. Dr. Cabin also opines that the remainder of Plaintiff's boiler plate claims in the bills of particular, including Plaintiff's claims that Dr. Slater did not carry out bloodwork as necessary to properly monitor and treat the Plaintiff's condition are without merit.

Based on Dr. Cabin's expert affirmation, Defendants have established prima facie entitlement demonstrating that Dr. Slater adhered to acceptable standards of medical practice, and risk of stent thrombosis was a known risk of Dr. Cabin's medical treatment.

Once defendant establishes prima facie entitlement to judgment as a matter of law, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact by submitting an expert's affidavit or affirmation attesting to a departure from accepted medical practice and opining that the defendant's acts or omissions were a competent producing cause of the plaintiff's injuries (*see Roques v Noble*, 73 AD3d at 207; *Landry v Jakubowitz*, 68 AD3d 728 [2d Dept 2009]; *Luu v Paskowski*, 57 AD3d 856 [2d Dept 2008]).

Here, Plaintiff, in opposition, submits the affirmation of Dr. Carlos Mena-Hurtado, M.D. (hereinafter "Dr. Mena-Hurtado"), board certified in Internal Medicine, Interventional Cardiology and Cardiovascular Disease, who opines to a reasonable degree of medical certainty that Dr. Slater deviated from acceptable medical practice when caring and providing treatment for the Plaintiff.

First, Dr. Mena-Hurtado contends that there was no established length of time after which DAPT should be discontinued. Contrary to the opinion of Defendant's expert, he notes that the American College of Cardiology indicated that "[t]he optimal duration of DAPT therapy in patients treated with DES is not well established." Dr. Mena-Hurtado also opined that the standard of care for the duration of DAPT in patients with drug-eluting stents was not established at the time, and pointed out that Dr. Ruiz, the physician who placed the stents in Dr. Freedman's left anterior coronary artery (LAD) indicated that the Effient should be taken for up to 30 months. Accordingly, Dr. Mena-Hurtado contends that since the length of the DAPT could be longer than 12 months for patients with drug-eluting stents, the standard of care was to thoroughly discuss the risks, benefits and options with the patient and come to a mutual decision. Dr. Mena-Hurtado opines that the standard of care required Dr. Slater to discuss the option which permitted DAPT to be continued using an alternative blood thinner. Dr. Mena-Hurtado indicates that both such drugs were available and that "if a physician in conjunction with his patient were concerned about the risk of intercranial bleeding with Effient, the standard of care would have required the discussion to include the possibility of switching to Brilinta or Plavix." As a result, Plaintiff's expert contends that said deviations caused the injuries plead by the Plaintiff, including the stent thrombosis.

The Court finds that the Plaintiff's expert raises issues of fact regarding alleged deviations and whether such deviations proximately caused Plaintiff's injuries, thus, rebutting the Defendants' prima facie entitlement to summary judgment based on the showing that the mere presence of an injury is insufficient to support a claim of medical malpractice (*see Johnson v St. Barnabas Hosp.*, 52 AD3d 286 [1st Dept 2008], appeal denied 11 NY3d 705 [2008]; *Landau v Rappaport*, 306 AD2d 446 [2d Dept 2003]; *Nabozny v Cappelletti*, 267 AD2d 623 [3d Dept 1999]; *Johnson v Jacobowitz*, 65 AD3d 610 [2d Dept 2009].

"Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], *quoting DiGeronimo v Fuchs,* 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; *see Elmes v Yelon,* 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld,* 131 AD3d 590 [2d Dept 2015]).

SUMMARY JUDGMENT AS TO LACK OF INFORMED CONSENT

In order to prevail on a claim for lack of informed consent, Plaintiff must establish: (1) that the Defendants failed to disclose to the patient the reasonably foreseeable risks, benefits and alternatives to the procedure; (2) that a "reasonably prudent person in the patient's position" would not have undergone the procedure had he been fully informed of the risks; and, (3) that the procedure for which lack of informed consent is claimed proximately caused the claimed injury (*see* Public Health Law §2805-d; *see also Briggins v. Chynn*, 204 AD2d 158 [1st Dept 1994]; *Orphan v Pilnik*, 15 NY3d 907 [2010]; *Henry v. Sunrise Manor Ctr. for Nursing & Rehabilitation*, 2014 NY Slip Op 32403(U) [Sup Ct, Suffolk County 2014]; *Joswick v Lenox Hill Hosp.*, 134 Misc 2d 295 [Sup Ct, NY County 1986]).

Here, Defendants' expert asserts that the Plaintiff received appropriate informed consent prior to the discontinuation of DAPT. In his expert affirmation Dr. Cabin notes that Dr. Slater testified as to his discussion with the Plaintiff, which included various treatment options, risks, benefits, and alternatives with the Plaintiff, together with the uncertainty surrounding optimal DAPT duration and the significant risk of bleeding. Dr. Cabin, upon review of Dr. Slater's testimony, opined that this discussion met the standard of care for informed consent. Further, Dr. Cabin opines that given the significantly elevated risk of bleeding associated with continued Effient use, especially in patients over 75, no reasonably prudent person in the Plaintiff's position

would have elected to continue the medication. Based on Dr. Cabin's expert opinion, the Court finds that the Defendants have met their burden in establishing the lack of informed consent, and Plaintiff's opposition is insufficient to rebut Defendants prima facie showing on this issue. As a result, dismissal of said claim is warranted.

SUMMARY JUDGMENT AS TO NYU LANGONE HEALTH SYSTEM

Although a hospital or other medical facility is liable for the negligence or malpractice of its employees, that rule does not apply when the treatment is provided by an independent physician, as when the physician is retained by the patient himself (*see Bing v Thunig,* 2 NY2d 656 [1957]; *Fiorentino v Wenger*, 19 NY2d 407, 414 [1967]; *Topel v Long Is. Jewish Med. Ctr.*, 55 NY2d 682, 683 [1981]). Here, NYU Langone Health System does not provide health care services and the record shows that Dr. Slater, a private attending physician employed by the NYU Langone Grossman School of Medicine, rendered treatment to the Plaintiff in his private office. Accordingly, NYU Langone Health System is not a proper party to this action and the claims against NYU Langone Health System must be dismissed as a matter of law.

Based on the foregoing, it is hereby

ORDERED, that the Defendants' motion for summary judgement is granted to the extent of dismissing the Plaintiff's lack of informed consent claim and all claims against NYU Langone Health Systems, and in all other respects the motion is denied; and it is further

ORDERED, that the Defendants are directed to serve a copy of this order upon the Plaintiff by first class regular mail to his last known address within twenty (20) days of entry of this order; and it is further

ORDERED, that within twenty (20) days of entry of this order, counsel for Defendants shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court

(60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment in accordance with this order; and it is further

ORDERED, that service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible a the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED, that the parties are directed to appear for a settlement conference on November 11, 2025, at 11:30 am, at 60 Centre Street, Room #351, New York, NY.

This constitutes the Decision and Order of the Court.

4/4/2025
DATE

KATHY J. KING, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

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