

**Chammah v Troper**

2025 NY Slip Op 31808(U)

May 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 503219/19

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, MMESP-6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of May 2025.

PRESENT:

HON. GENINE D. EDWARDS,  
Justice.

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GABRIEL CHAMMAH, as Administrator of  
the Estate of MIRIAM CHAMMAH, a/k/a  
MIRIAM M. BENSOUSSAN, Deceased, and  
GABRIEL CHAMMAH, Individually,

Plaintiffs,

-against-

JACK TROPER, M.D.,  
REBEKAH KORINE, C.N.M.,  
ELAINE SKLAR, M.D.,  
LINDSAY KRAUS, C.N.M.,  
DIANE NICHOLSON, C.N.M.,  
LORA DIBNER-GARCIA, C.N.M.,  
SHIRA ALTER, M.D.,  
MATTHEW SILVERMAN, M.D.,  
BORO PARK OBSTETRICS AND GYNECOLOGY, P.C.,  
and MAIMONIDES MEDICAL CENTER,

Defendants.

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ORDER

Index No. 503219/19

Mot. Seq. Nos. 3, 2, 5, 4

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits.....	124-159, 236; 160-166; 167-205; 141-164; 206-235
Affirmations (Affidavits) in Opposition, and Exhibits.....	240-256; 258-274; 276-292
Reply Affirmations and Exhibits.....	297-298, 304; 299-300; 301-303

This is an action to recover damages for, inter alia, medical malpractice and wrongful death of Miriam Chammah, also known as Miriam M. Bensoussan (the “patient”), a private patient of: (1) Boro Park Obstetrics and Gynecology P.C. (“Boro Park”); (2) Boro Park’s certified midwives, Rebekah Korine, C.N.M. (“CNM Korine”), Lindsay Kraus, C.N.M. (“CNM Kraus”), Diane Nicholson, C.N.M. (“CNM Nicholson”),

<sup>1</sup> By stipulation, dated July 22, 2019, plaintiffs discontinued their direct claims against Vashisht Persad, M.D., Alex Chen, M.D., Gerard Betro, M.D., Jennie Kim, M.D., and Heath Walden, M.D. Plaintiffs, however, preserved their vicarious liability claims (to the extent predicated on the discontinued defendants’ alleged acts/omissions) against their employer Maimonides Medical Center.

and Lora Dibner-Garcia, C.N.M. (“CNM Dibner-Garcia”); and (3) Boro Park’s private obstetricians, Jack Troper, M.D. (“Dr. Troper”), Elaine Sklar, M.D. (“Dr. Sklar”), Shira Alter, M.D. (“Dr. Alter”), and Matthew Silverman, M.D. (“Dr. Silverman”). Briefly, the patient, a 28-year-old, non-diabetic multipara (with two prior live births), received all her prenatal care as a private midwifery patient of Boro Park in calendar year 2016. On Thursday, December 22, 2016, when the patient was 38 weeks and 5 days into her third pregnancy, Boro Park admitted the patient to its own midwifery service at Maimonides Medical Center (“MMC”), for vaginal delivery to be preceded by induction of labor. Upon admission to MMC, the patient was suffering from severe and symptomatic polyhydramnios, meaning that her overextended (amniotic fluid-filled and membrane-intact) uterus was pushing against her diaphragm, making it difficult for her to breathe. Her medical history was significant for post-partum hemorrhage after vaginal delivery of her second child. The following day, Friday, December 23<sup>rd</sup>, CNM Dibner-Garcia and Dr. Alter, both affiliated with Boro Park, were present at MMC to care for the patient as well as other private patients, from approximately 07:00 hours of that day. Shortly before and following Dr. Alter’s delivery of the baby by vacuum extraction at 19:40 hours on December 23<sup>rd</sup>,<sup>2</sup> the patient suffered a prolonged cardiac arrest (accompanied by severe uterine hemorrhage with the ensuing disseminated intravascular coagulation), sustaining anoxic brain injuries. On December 30<sup>th</sup>, the patient, on life support, was transferred to nonparty New York Presbyterian/Columbia University Hospital from which she was discharged to nonparty Monmouth Medical Center. While there, she succumbed to sepsis on April 26, 2017, without ever regaining consciousness. No autopsy was performed due to religious reasons. Plaintiff is the patient’s husband, acting as the administrator of his wife’s Estate and individually (collectively, “plaintiff”).

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<sup>2</sup> The baby’s APGAR scores at 5 and 10 minutes of life were 8 and 9, respectively, the patient’s husband and the father of her children denied in his deposition testimony that the baby suffered any perinatal or post-natal injuries. No claims are advanced on the baby’s behalf.

Upon review of the foregoing papers, as submitted to the Court on December 6, 2024 (and as rearranged by the Court herein to maintain continuity),<sup>3</sup> it is

ORDERED that CNM Korine's motion for an order, pursuant to CPLR 3217 (b), approving the stipulation of discontinuance of plaintiff's claims against her is granted without opposition, the stipulation of discontinuance as to CNM Korine, dated May 28, 2024, is deemed "so ordered," and all of plaintiff's claims against CNM Korine are dismissed, and it is further

ORDERED that the joint summary judgment motion of Boro Park and its midwives, CNM Kraus, CNM Nicholson, and CNM Dibner-Garcia (collectively, the "Boro Park midwives"), is granted to the following extent:

(1) all of plaintiff's claims against CNM Kraus (and vicariously against Boro Park) are dismissed;

(2) all of plaintiff's claims against CNM Nicholson (and vicariously against Boro Park) are dismissed;

(3) plaintiff's lack of informed consent claim against CNM Dibner-Garcia (and vicariously against Boro Park) is dismissed;

(4) plaintiff's medical malpractice and wrongful death claims against CNM Dibner-Garcia (and vicariously against Boro Park), to the extent predicated on CNM Dibner-Garcia's alleged acts/omissions for the periods (i) from Monday, May 9, 2016, through Thursday, December 22, 2016, and (ii) from Friday, December 23, 2016, counting from the physical arrival at the patient's *Labor & Delivery Room* of each of Dr. Alter and MMC's rapid-response team (such later time is defined herein as the "L&D

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<sup>3</sup> The Court studied the patient's medical records at Boro Park and MMC as well as reviewed the parties' voluminous submissions (particularly their respective experts' submissions), totaling (without duplication) in excess of 6,000 pages.

code-response time”),<sup>4</sup> until the end of the patient’s hospitalization at MMC on Friday, December 30, 2016, are dismissed;

(5) plaintiff’s additional claims against Boro Park, as predicated on its alleged failures to: (i) obtain informed consent, (ii) supervise and monitor, (iii) establish, prepare, author, and draft rules/regulations, and (iv) grant or renew privileges or employment, are dismissed;

(6) plaintiff’s remaining medical malpractice and wrongful death claims against CNM Nicholson, CNM Dibner-Garcia, and Boro Park, insofar as such claims are predicated (or imputed) to one or more of such defendants because of the alleged acts/omissions of MMC’s personnel, are dismissed; and

(7) the remainder of Boro Park and its midwives’ joint motion is denied, and it is further

ORDERED that the joint motion of Drs. Troper, Sklar, Alter, and Silverman (collectively, the “Boro Park physicians”) is granted to the following extent:

(1) all of plaintiff’s claims against Drs. Troper, Sklar, and Silverman are dismissed;

(2) plaintiff’s lack of informed consent claim against Dr. Alter is dismissed; and

(3) plaintiff’s claims against Dr. Alter from and after the patient’s arrival in the *Operating Room* on Friday, December 23, 2016 (the “OR arrival time”), until the end of the patient’s hospitalization at MMC on Friday, December 30, 2016, are dismissed; and the remainder of the Boro Park physicians’ motion is denied, and it is further

ORDERED that MMC’s motion is granted in its entirety, and it is further

ORDERED that, for the avoidance of doubt, this action shall continue against:

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<sup>4</sup> The record is unclear as to whether Dr. Alter or MMC’s rapid response team arrived first at the patient’s Labor & Delivery Room in response to the codes that were telephoned and announced overhead.

(1) CNM Dibner-Garcia as predicated on her alleged acts/omissions as a private midwife on Friday, December 23, 2016, from and after the commencement of her shift at MMC at or about 07:00 hours until the L&D code-response time (as defined above);

(2) Dr. Alter as predicated on her alleged acts/omissions as a private obstetrician on Friday, December 23, 2016, from and after the commencement of her shift at or about 07:00 hours until the OR arrival time (as defined above); and

(3) vicariously against Boro Park as to each of the foregoing, and it is further

ORDERED that the clerk is directed to enter a judgment in favor of CNM Kraus, CNM Nicholson, Dr. Troper, Dr. Sklar, Dr. Silverman, and MMC, and it is further

ORDERED that the action is severed and continued against CNM Dibner-Garcia, Dr. Alter, and Boro Park, and the caption is amended to read as follows:

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GABRIEL CHAMMAH, as Administrator of  
the Estate of MIRIAM CHAMMAH, a/k/a  
MIRIAM M. BENSOUSSAN, Deceased, and  
GABRIEL CHAMMAH, Individually,

Plaintiffs,

-against-

LORA DIBNER-GARCIA, C.N.M.,  
SHIRA ALTER, M.D., and  
BORO PARK OBSTETRICS AND GYNECOLOGY, P.C.,

Defendants.

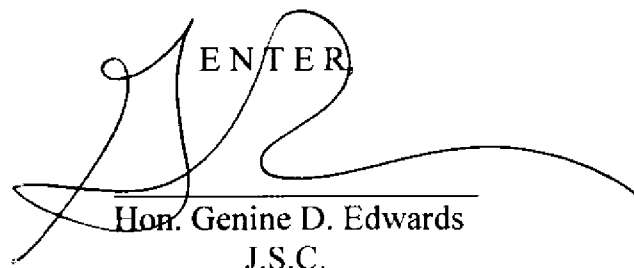
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; and it is further

ORDERED that plaintiffs' counsel shall electronically serve a copy of this Decision and Order with notice of entry on the other parties' respective counsel and shall electronically file an affidavit of service thereof with the Kings County Clerk, and it is further

**ORDERED** that the remaining parties are directed to appear remotely at the Alternative Dispute Resolution Conference on July 2, 2025, at 12PM.

This constitutes the Decision and Order of the Court.

 A handwritten signature in black ink, appearing to read 'G. Edwards', is written over the printed name. The signature is stylized and loops around the printed name.

ENTER  
Hon. Genine D. Edwards  
J.S.C.