

**Francois v Quispe**

2025 NY Slip Op 31862(U)

May 20, 2025

Supreme Court, New York County

Docket Number: Index No. 153162/2025

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. EMILY MORALES-MINERVA PART 42M**

*Justice*

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FRITZ FRANCOIS, MD, MSC, FAGG, EXECUTIVE VICE  
PRESIDENT AND VICE DEAN, CHIEF OF HOSPITAL  
OPERATIONS, NYU LANGONE HOSPITALS

Petitioner,

- v -

ZAIRA QUISPE,

Respondent.

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INDEX NO. 153162/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER  
AFTER HEARING**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 7, 8, 9, 10, 11  
were read on this motion to/for DISCHARGE.

**APPEARANCES:**

Miller & Milone, PC, Garden City, NY (Tammy Rose Lawlor,  
Esq., of counsel) for petitioner.

Tanya Hobson-Williams Attorney at Law, Jamaica, NY (Tanya  
Hobson-Williams, Esq., court-appointed counsel) for  
respondent.

**HON. EMILY MORALES-MINERVA:**

Petitioner NYU Langone Hospitals (petitioner) filed the  
instant petition, by order to show cause (mot. seq. no. 001), on  
March 10, 2025, seeking a judgment pursuant to Section 2801-C of  
the Public Health Law<sup>1</sup> requiring respondent ZAIRA QUISPE to  
discharge herself from petitioner's hospital.

<sup>1</sup> Section 2801-C of the Public Health Law provides, "The supreme court may  
enjoin violations or threatened violations of any provisions of this article;  
and it may enjoin violations of the regulations of the department adopted  
thereunder. Upon request of the public health council or the commissioner,  
the attorney general shall maintain an action in the supreme court in the

The court scheduled a hearing on the matter, which commenced April 11, 2025, continued May 02, 2025, and concluded May 20, 2025. Throughout the hearing, petitioner appeared by counsel and respondent appeared with her court-appointed counsel.

For its presentation, petitioner called as a witness Evan Siau, M.D. Dr. Siau is respondent Quispe's treating physician at NYU Langone Hospitals, specializing in internal medicine. He testified under oath subject to cross-examination.

Petitioner also called as a witness Kristin Woxholdt, an inpatient medical social worker at NYU Langone Hospitals. She also testified under oath subject to cross-examination.

Finally, upon petitioner's application, the Court entered the following exhibits as evidence: respondent Quispe's Discharge Notice, dated February 27, 2025 (Petitioner's Exhibit A), and respondent Quispe's Notice of IPRA Discharge Review Determination (Petitioner's Exhibit B).

At the conclusion of petitioner's presentation, respondent Quispe immediately rested, presenting no rebuttal testimony or

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name of the people of the state to enjoin any such violation. Notwithstanding any limitation of the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a temporary injunction upon such terms as may be just, pending the determination of the action. No security on the part of the people of this state shall be required. In any action for injunction brought pursuant to this article, any finding of the public health council or the commissioner or hearing officer designated by either shall be prima facie evidence of the fact or facts found therein."

other evidence. At that time, counsel for respondent Quispe confirmed, on record, that her attempts to contact respondent Quispe's husband to discuss, and perhaps testify, at this proceeding were unavailing. Respondent's husband did not respond to counsel's calls or attempts at contact. He never appeared at the hearing.

The parties made their closing arguments, and the Court reserved decision on the subject petition.

Now, based on the credible testimony, evidence admitted, and applicable law, the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Respondent Zaira Quispe is a married person, who resides with her husband in New York County.
2. On or about September 13, 2024, she visited the emergency room of New York University Langone Hospitals (petitioner), suffering from, among other things, chronic diarrhea and chronic full body pain.
3. The hospital admitted respondent Quispe for inpatient care on that day.
4. At or around six months later, on February 27, 2025, the hospital issued respondent Quispe a discharge notice,

advising her that she is medically stable for discharge (Petitioner's Exhibit A).

5. Respondent Quispe filed for review of her discharge with non-party Island Peer Review Organization (IPRA).
6. On or about March 04, 2025, IPRA issued a determination, upholding the hospital's decision.
7. In a factually blind determination, the IPRA stated as follows:

"Based upon the documentation received, IPRO agrees with the decision that inpatient hospital services are no longer medically necessary and that an appropriate discharge plan has been established"

(Petitioner's Exhibit B).

8. The hospital contends that, prior to the notice of discharge, a doctor performed a medical assessment of respondent Quispe, which is part of her hospital records and which her current treating physician reviewed for purposes of managing her care.
9. Later, Dr. Evan Siau became respondent's treating physician.
10. Following his review of respondent's hospital records and his medical evaluation of her, Dr. Siau concluded that respondent Quispe is oriented to person, place and time, and that she is capable of understanding and participating in a safe discharge plan.

11. Further, while acknowledging that respondent Quispe has wounds on her backside, Dr. Siau testified that she no longer has acute health problems and that she is medically stable for release from the hospital.
12. Her treating physician testified that the safest option for respondent Quispe is to discharge from the hospital and to transfer to a subacute rehabilitation center that has a bed available for her.
13. The doctor explained respondent Quispe needs help cleaning and dressing her wounds daily; she is not ambulatory or able to move from place to place unassisted.
14. Dr. Siau further explained that -- as respondent Quispe is medically stable for discharge and requires a lower level of care -- her continued stay at the hospital denies a bed to a person with acute medical needs.
15. The doctor further expressed that respondent Quispe's unwillingness to leave the hospital exposes her to an unnecessary risk of hospital-borne infections.
16. The doctor did not discuss risks of transporting respondent Quispe from the hospital to the subacute facility or to her home, despite respondent Quispe having no family to assist her and despite respondent having sores/wounds on her backside.

17. Kristin Woxholdt, an inpatient medical social worker at NYU Langone hospitals, worked on respondent Quispe's discharge plan; she directly attempted outreach to respondent's family, including her husband.
18. The social worker also investigated in-home care services for respondent.
19. However, as Kristen Woxhold affirmed, no one in respondent Quispe's family has shown up willing to care for respondent at home and/or willing to receive training in the wound care services respondent requires for her health and safety.
20. The same social worker further affirmed that available home care services are not a viable option for respondent for this reason.
21. According to social worker Woxhold, at-home service providers require the recipient of services to have a backup care option for when a visiting nurse is unavailable.
22. While respondent Quispe resides with her husband when not in the hospital, her husband did not appear in court for the hearing, despite respondent's counsel making direct attempts to contact him on behalf of respondent Quispe, and despite respondent Quispe's contention that her husband will care for her at home.

23. Finally, Kristin Woxholdt discussed her extensive efforts to find a placement for respondent Quispe in a subacute rehabilitation facility that can provide the requisite lower level of care in comparison to the hospital setting.
24. After researching over 100 facilities in the New York metropolitan area, the social worker was able to secure a bed for respondent Quispe at "Casa Promesa Skilled Nursing Facility" (Casa Promesa), located in Bronx, New York.
25. The hospital arranged for respondent Quispe's transfer to Casa Promesa; however, respondent Quispe refused to be placed on the stretcher required for her transportation.
26. The record contains no copy of the hospital's written discharge plan, although respondent's discharge notice refers to such plan as attached and "describing the arrangements for any future health care [respondent Quispe] may need when [she] leaves the hospital" (Petitioner's Exhibit A, Discharge Notice, dated February 27, 2025 [emphasis added]).
27. Petitioner's proposed order in this matter, which this court requested, includes, among other things, the following suggested decretal:

"if ZAIRA QUISPE refuses to comply with this Order requiring her immediate discharge from NYU LANGONE HOSPITAL, the New York County Sheriff is commanded to [a] remove ZAIRA QUISPE from NYU LANGONE HOSPITAL by

reasonable and necessary force and [to (b)]  
 remand her to the vehicle [undisclosed]  
which shall transport her to Casa Promesa  
Skilled Nursing Facility, located at 308  
East 175<sup>th</sup> Street, Bronx, New York 10457"

(NYSCEF Doc. No. 13, Petitioner's Proposed Order [emphasis added]).

#### CONCLUSIONS OF LAW

"Every general hospital shall admit any person who is in need of immediate hospitalization with all convenient speed . . ." (Public Health Law § 2805-b [1]). Once admitted, "[e]ach removal, transfer or discharge [of a patient] shall be carried out after [1] a written order made by a physician that, in [their] judgment, such removal, transfer or discharge will [a] not create a medical hazard to the person or that such removal, transfer or discharge is [b] considered to be in the person's best interest despite the potential hazard of movement" (10 NYCRR § 405.9 [h] [7] [emphasis added]). Further, "such a removal, transfer or discharge shall be made only after explaining the need for removal, transfer or discharge to the patient and to the patient's family/representative and prior notification to the medical facility expected to receive the patient" (id.).

If an attending practitioner discharges a patient from the hospital following such procedure, such person "shall not be permitted to remain in the hospital without the consent of the chief executive officer of the hospital . . ." (10 NYCRR § 405.9 [h] [7] [ii]).

Finally, where a patient refuses to leave the hospital upon such discharge, upon the hospital's application, the New York State Supreme Court may grant a mandatory injunction against the patient (see generally Public Health Law § 2801-c; see also Indemini v. Beth Isr. Med. Ctr., 4 NY3d 63, 67 [2005] [providing "Supreme Court may enjoin violations or threatened violations of article 28" of the Public Health Law]; see also Francois v Garner, 2023 NY Slip Op 34039[U], 2023 NY Misc. LEXIS 20095, \*2 [Sup Ct, NY County 2023] [stating that, pursuant to Public Health Law §2801-c, this Court has the authority to grant a mandatory injunction demanding a patient comply with 10 NYCRR §405.9 [f] [7] [ii]).

A mandatory injunction is a court directive requiring a person to perform certain acts like the act of leaving the hospital upon proper discharge (Matter of New York Methodist Hosp., 25 Misc3d 648, 653 [Sup Ct, Kings Cnty 2009], citing Matter of Wyckoff Hgts. Med. Ctr. v Rodriguez, 191 Misc2d 207 [Sup Ct, Kings Cnty 2002] and McCain v Koch, 70 NY2d 109 [1987] [holding, albeit in the context of municipal agencies, that

"(t)here is no question that in a proper case Supreme Court has power as a court of equity to grant a temporary injunction which mandates specific conduct"). As mandatory injunctions typically provide the moving party with the relief sought as a final remedy, this type of injunction is both uncommon and drastic (see New York Methodist Hosp., 25 Misc3d at 653, citing Wyckoff Hgts. Med. Ctr., 191 Misc2d at 208-209).

Applying these principles here, the court declines to grant a mandatory injunction against respondent Quispe. Petitioner has not established that the removal and discharge sought against respondent Quispe is being carried out after "a written order made by a physician that, in [their] judgment, such removal, transfer or discharge [a] will not create a medical hazard to the person or [b] is considered to be in the person's best interest despite the potential hazard of movement" (10 NYCRR § 405.9 [h] [7] [emphasis added]).

While the record includes the written notice of discharge and the determination of the IPRA upon review of the discharge, neither document describes the specifics of the discharge plan or a physician's "written order" in compliance with the plain language of 10 NYCRR § 405.9 (h) (7), emphasized above. Further, Dr. Saiu, while testifying that respondent Quispe is best served at a subacute rehabilitation center, did not testify as to the

risks, if any, to respondent when being transported without medical or caretaker's assistance.

The hospital seeks for the court to mandate the Sheriff to "remand [respondent Quispe] to the [unknown and/or undescribed] vehicle which shall transport her to Casa Promesa Skilled Nursing Facility" (NYSCEF Doc. No. 13, Petitioner's Proposed Order). Yet, nowhere in this record is there a doctor's judgment that such a plan of action creates no potential for medical injury or doctor's judgment that respondent's best interests outweigh the potential of such injury. The court's understanding is that respondent Quispe can only be transported by stretcher, she has wounds on her backside, and she does not tolerate sitting up.

Further, this plan would essentially place the Sheriff's office both in charge of evicting respondent Quispe and of providing her extensive physical assistance without any medical or other supervision of her wounds or hygiene requirements. This is not a circumstance where a patient is removed to the street and can walk off to a place of their choosing or, even, walk off to a place where they are not blocking the sidewalk or where they may use the bathroom.

While not dispositive here, the court has a deep concern that neither NYU hospital nor respondents' family has contacted Adult Protective Services (APS) on respondent Quispe's behalf.

She is not the subject of a proceeding, pursuant to Article 81 of the Mental Hygiene Law, and she is not a person who is deemed or alleged to be incapacitated.

Indeed, respondent Quispe's treating physician testified credibly that respondent understands her condition and that she can participate in a safe discharge plan. However, respondent does not want to follow the hospital's recommendation, and respondent desperately expresses wanting to go home while being unable to take herself there. Adult Protective Services may present a viable option to assist respondent Quispe in exercising physical autonomy or in facilitating her choices, as long as she remains capable of decision making.

Accordingly, it is

ORDERED that the petition and order to show cause (mot. seq. no. 001) are denied without prejudice; it is further

ORDERED that the matter is dismissed in its entirety, without prejudice; it is further

ORDERED that petitioner shall serve a copy of this decision and order upon respondent; it is further

ORDERED that petitioner shall serve this decision and order upon the Clerk of the Court, and the Clerk of the Court is directed to SEAL the file in this action in its entirety, granting access only to the parties, counsel, and appropriate court personnel; it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

5/20/2025  
DATE

  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE