SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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RUTH CLINTON, DECEASED, by and through VEOLA WALDON, as Administratrix of the Estate of RUTH CLINTON,

Plaintiff,

- v -

JEWISH HOME LIFECARE, MANHATTAN, JEWISH HOME LIFECARE, MANHATTAN D/B/A THE NEW JEWISH HOME, MANHATTAN, THE JEWISH HOME AND HOSPITAL FOR AGED, THE JEWISH HOME AND HOSPITAL FOR AGED D/B/A THE NEW JEWISH HOME, MANHATTAN

Defendants.

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INDEX NO. 155679/2019

MOTION DATE 04/25/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 65, 66, 67

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff brings this action seeking damages based on asserted causes of action for alleged violations of Public Health Law, negligence, gross negligence, and wrongful death arising out of the care and treatment rendered to the plaintiff-decedent, Ruth Clinton, during her admissions to the defendants' facility from on or about December 8, 2016 through on or about March 2, 2017; on or about March 7, 2017 through on or about April 12, 2017; and on or about April 13, 2017 through on or about June 12, 2017.

ALLEGED FACTS

On November 26, 2016, Ms. Clinton was admitted to Lenox Hill Hospital for leg edema, low blood count, dizziness, and weakness after being brought to the emergency room by her

daughter. She was then 95-years old with advanced dementia and congestive heart failure. Her past medical history included anemia, hypertension, hypothyroidism, iron deficiency, GI bleed, and stented coronary artery. Ms. Clinton's daughter reported weakness that had increased over the past two weeks. According to her daughter, Ms. Clinton had a history that included dementia but was normally ambulatory with assistance of a walker. However, over the two weeks prior, Ms. Clinton was unable to walk. Ms. Clinton was documented as alert, confused, and only oriented to herself.

The following day, on November 27, 2016, a skin examination revealed a stage II pressure ulcer to the sacrum.

On November 28, 2016, it was documented that Ms. Clinton was getting progressively weaker. She had severe acute systolic heart failure, she was bed bound, had dementia, and was not a candidate for transcatheter aortic valve replacement. The plan was for palliative care.

On November 29, 2016, palliative care met with Ms. Clinton and her daughter, to discuss Ms. Clinton's disease and the fact that she was likely in the terminal phases with no likely cure. Ms. Clinton had several prior admissions that same year due to worsening of symptoms despite medical management. Home hospice services were recommended and Ms. Clinton's prognosis was less than six months.

On December 1, 2016, Ms. Clinton's daughter advised that she could not meet with palliative care that day, stating the rest of the family wanted to be present during the conversation about hospice and code status. Palliative care advised that they would have to discharge Ms. Clinton to a subacute rehabilitation facility if no decision had been made about hospice soon, as Ms. Clinton was likely medically ready for discharge. Medical staff continued to reiterate to Ms. Clinton's family that hospice would be the best plan of care given Ms.

Clinton's history of readmissions for uncontrolled symptoms and that her heart disease was non-operable.

On December 2, 2016, Ms. Clinton's daughter requested Ms. Clinton be discharged to a subacute rehabilitation facility if she had any rehabilitation days available. If there were no rehabilitation days left, she would agree to discharge with home hospice services. On December 3, 2016, Ms. Clinton was documented as refusing to eat.

Ms. Clinton was discharged from Lenox Hill Hospital on December 8, 2016. The plan was for Ms. Clinton to be enrolled in home hospice services once she is ready to be discharged from New Jewish Home. The discharge summary indicated her reason for admission was acute on chronic diastolic congestive heart failure exacerbation. Her principal discharge diagnosis was acute on chronic diastolic congestive heart failure. Her secondary discharge diagnoses were chronic anemia, hypertension, hypothyroid, and urinary tract infection. Ms. Clinton's discharge weight was 123.6 pounds.

On December 8, 2016, Ms. Clinton was admitted to New Jewish Home for rehabilitation. The Comprehensive Care Plan regarding non-standard skin care was updated to include wound care.

The Comprehensive Care Plan regarding non-standard skin care was updated to include wound care. As per protocol, if a resident had a wound, the wound care team would automatically examine them on a weekly basis. In addition, she was to receive a hospital bed with gel overlay and a wheelchair with a gel cushion. She had received a Braden score of 14 and was a high risk for pressure ulcers. Incontinence and limited mobility were documented as pressure ulcer risk factors and a skin lesion assessment was performed. Turning and positioning at least every two hours would be routine for any resident that is incontinent, has pressure ulcers,

or cannot turn themselves. A sign was located on the door to alert the need for turning and positioning. It would be done automatically and there was no direction needed. Even if turning and positioning is not documented within the CNA Accountability forms, it is routine.

On March 2, 2017, Ms. Clinton was transferred to New York Presbyterian for weight loss, anorexia, severe dehydration, and combativeness. The EMS report indicated Ms. Clinton had been refusing to eat for the past six weeks.

The goals of care were discussed with Ms. Clinton's family by the primary team and palliative care. Ms. Clinton's family ultimately opted for a hospital transfer for work up and further treatment. The palliative care note indicated feeding tubes were discussed and the family opted against tube feedings.

On March 6, 2017, Ms. Clinton was readmitted to New Jewish Home to continue rehabilitation, she remained there through April 12, 2017, when she was transferred to Lenox Hill Hospital for a non-urgent blood transfusion due to low hemoglobin levels. On April 13, 2017, Ms. Clinton was readmitted to New Jewish Home where she remained until June 12, 2017, when she was readmitted to Lenox Hill Hospital with a chief complaint of urinary tract infection, worsening lethargy, altered mental status, and confusion.

On June 15, 2017, Ms. Clinton was diagnosed with respiratory acidosis likely secondary to pneumonia with a differential diagnosis in mental status.

On June 16, 2017, hospitalist attending progress note indicated Ms. Clinton appeared to be dying and, given her end stage dementia with multiorgan failure of the cardiac, kidney, and lungs, likely due to sepsis. Hospice was recommended; however, Ms. Clinton's family was undecided. Ms. Clinton's acute kidney injury on chronic kidney disease was worsening due to sepsis/respiratory failure.

On June 19, 2017, Ms. Clinton started to develop a bruise on her left arm. Palliative care examined Ms. Clinton and found her to be in respiratory distress with excessive work of breathing. Palliative care discussed Ms. Clinton's decline over the weekend as well as the decline in organ function as evidenced by her kidney failure with her daughter who was at her bedside. It was documented that Ms. Clinton's multi organ failure will likely cause her passing. Her prognosis was a matter of hours, to days, or a week. In addition, Ms. Clinton's family indicated the same have decided to focus on comfort care going forward.

On June 23, 2017, Ms. Clinton was discharged from Lenox Hill Hospital and transferred to Calvary Hospice. She was documented as a 96-year old woman with multiple comorbidities including coronary artery disease with two stents, severe aortic stenosis, dementia, respiratory failure, acute kidney injury, and GI bleed. She was documented as semi-comatose and not taking anything by mouth. Ms. Clinton's daughters voiced the wish to have comfort care only, no life-sustaining treatment going forward. Ms. Clinton passed away the following day, on June 24, 2017.

PENDING MOTION

On May 23, 2025, defendants moved for summary judgment. On July 7, 2025, the motion was fully briefed, marked submitted and the Court reserved decision. For the reasons set for the below, the motion is granted.

DISCUSSION

It is well-settled that summary judgment should be granted where there is no genuine, triable issue of fact and no legal merit to a cause of action. *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, rendering sufficient evidence to eliminate any

material issues of fact from the case. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986). Once a *prima facie* showing has been made, the burden shifts to the opposing party, who must produce evidentiary proof, in admissible form, sufficient to establish the existence of a material issue of fact, which would require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *LoBreglio v. Marks*, 105 A.D.2d 621, 622 (1st Dept. 1984).

The essential elements of medical malpractice are a deviation or departure from the generally accepted standard of medical care and evidence that such departure was a proximate cause of injury. *Pittelli v. MacGillivray*, 222 A.D.3d 442 (1st Dept. 2023); *Wexelbaum v. Jean*, 80 A.D.3d 756 (2d Dept. 2011).

> In an action premised upon medical malpractice, a defendant …. 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 A.D.3d 999, 1001, 887 N.Y.S.2d 655 [2009]; *Myers v. Ferrara*, 56 A.D.3d 78, 83, 864 N.Y.S.2d 517 [2008]; *Germaine v. Yu*, 49 A.D.3d 685, 854 N.Y.S.2d 730 [2008]; *Rebozo v. Wilen*, 41 A.D.3d 457, 458, 838 N.Y.S.2d 121 [2007]; *Williams v. Sahay*, 12 A.D.3d 366, 368, 783 N.Y.S.2d 664 [2004]). When medical malpractice forms the basis of a wrongful death action, in establishing that he/she did not proximately cause the injuries alleged to have caused plaintiff's death, a defendant establishes prima facie entitlement to summary judgment as to the wrongful death action as well (*see Koeppel v. Park*, 228 A.D.2d 288, 644 N.Y.S.2d 210 [1996]; *Thurston v. Interfaith Med. Ctr.*, 66 A.D.3d 999, 887 N.Y.S.2d 655 [2009], *supra; Myers v. Ferrara*, 56 A.D.3d 78, 864 N.Y.S.2d 517 [2008], *supra*).

Roques v. Noble, 73 A.D.3d 204, 206 (1st Dept., 2010)

> Once the defendant meets his burden of establishing prima facie entitlement to summary judgment, it is incumbent on the plaintiff, if summary judgment is to be averted, to rebut the defendant's prima facie showing (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]). The plaintiff must rebut defendant's prima facie showing without "[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence" (*id.* at 325, 508 N.Y.S.2d 923, 501 N.E.2d 572). Specifically, to avert summary judgment, plaintiff must demonstrate that the defendant did in fact commit malpractice and that the malpractice was the proximate cause of the plaintiff's injuries (*Coronel v. New York City Health and Hosps. Corp.*, 47 A.D.3d 456, 848 N.Y.S.2d 876 [2008]); (*Koeppel* at 289, 644 N.Y.S.2d 210). In order to meet the required burden, the plaintiff must submit an affidavit from a medical doctor attesting

> that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged (*Thurston* at 1001, 887 N.Y.S.2d 655; *Myers* at 84, 864 N.Y.S.2d 517; *Rebozo* at 458, 838 N.Y.S.2d 121).

Id at 207.

The Court finds that Defendant has met its initial burden of establishing judgment as a matter of law. As demonstrated by the relevant records included herein, as well as the expert affirmation of Dr. Diamond, defendants acted within good and acceptable standards of medical practice during the care and treatment of the decedent. The records show that the pressure ulcers were identified, monitored, and treated. Continued wound care was provided.

On June 12, 2017, the last date of Ms. Clinton's residency at defendants' facility, a wound assessment was documented that the right ischium and right lateral heel wounds remained the same. The right lateral heel had slough tissue and no odor. The sacrum had two ulcers, approximately nickel sized with epithelial tissue to the wound base, no slough noted, well approximated edges, and no drainage. Ms. Clinton was documented as in no apparent distress and vital signs were stable.

Dr. Diamond opined that the decedent was critically ill at the time of treatment and her overall medical condition, including several pre-existing comorbidities, multiorgan failure, which negatively affected her skin integrity, resulting in skin breakdown and preventing her skin's ability to heal. The Lenox Hill records show that Ms. Clinton's health deterioration and ultimate death was caused by her end stage dementia, with multiorgan failure of cardiac, kidney, and lungs. Ms. Clinton also had severe aortic stenosis. Hospice care continued to be recommended, but refused by Ms. Clinton's family.

On June 19, 2017, Ms. Clinton was found to be in respiratory distress, with excessive work of breathing. Palliative care discussed her decline with the family, and Ms. Clinton's

daughter was advised that there was a decline in organ function. The prognosis was hours, days, or at most one week. At no point was there any finding of any infection related to the pressure ulcers. Ms. Clinton was ultimately transferred to hospice care.

Dr. Diamond opined that Ms. Clinton's development and worsening of his skin pressure ulcers were the result of her comorbidities. Specifically, Dr. Diamond opined that:

> Ms. Clinton's comorbidities and advanced age increased her risk to develop pressure injuries and inhibited wound healing. It is my opinion, to a reasonable degree of medical certainty, that Ms. Clinton was in multiorgan organ failure and skin failure along with it which is what led to skin breakdown. Based on the medical records, it is my opinion to a reasonable degree of medical certainty that the defendants took steps to promote wound healing and prevent the development of further wounds and the deterioration of existing wounds.

Dr. Diamond further opined that Ms. Clinton's comorbidities, including her nutritional deficiencies, decreased her skin's ability to recover and heal, despite the implementation of protocols and wound care management throughout her admissions at New Jewish Home.

With respect to the wrongful death claim, Dr. Diamond opined that the decedent's death was not proximately caused by any alleged act or omission by New Jewish Home. The decedent was 96-years old at the time of her death and her death was due to natural causes along with the unpreventable progression of her underlying comorbidities. There is no evidence that her death was caused by her pressure injuries, rather than due to her advanced age and multiple life-threatening comorbidities, including multiorgan failure. Dr. Diamond opined that no aspect of the care and treatment provided by defendants caused or contributed to Ms. Clinton's death.

While Plaintiff submits an expert opinion in opposition, it fails to raise a question of fact as to causation.

There is no evidence of any deviation from the generally accepted standard of medical care with respect to plaintiff's care and treatment and there is a clear lack of causation between the treatment rendered and the injuries alleged herein.

Conclusory allegations of medical malpractice that are "unsupported by competent evidence…are insufficient to defeat [a] defendant physician's summary judgment motion." *Alvarez v. Prospect Hospital*, 5 N.Y.2d 320, 325 (1987); *Roques v. Noble*, 73 A.D.3d 204 (1st Dept. 2010).

While plaintiff relies heavily on certain omissions or gaps in clinical documentation, such documentation does not have to be perfect to meet the standard of care. As held by the First Department:

> Nor was an issue of fact raised by the expert's opinion that defendants caused the decedent's ulcer by not documenting their records in greater detail or her finding that the failure to document was itself the proximate cause of the ulcers. A failure to document each element of the skin care protocol does not equate to a failure to perform each element or to a cause of the ulcer itself (*see Topel v Long Is. Jewish Med. Ctr.*, 55 NY2d 682, 684 [1981]; *Rivera v Jothianandan*, 100 AD3d 542, 543 [1st Dept 2012], *lv denied* 21 NY3d 861 [2013]).

Braunstein v. Maimonides Med. Ctr., 161 A.D.3d 675 (2018).

Plaintiff 's expert focuses on gaps in charting, while ignoring the overall picture of the decedent's health and comorbidities. The fact that no pressure ulcers became large or infected demonstrates that sufficient care was in fact provided. The sacral ulcer the decedent first arrived at New Jewish Home with was actually healed initially by defendant's care.

Plaintiff's expert fails to address the various discussions about hospice and life expectancy which were ongoing for the 95-year old decedent and how multi-organ failure would impact the decedent's ability to maintain intact skin or to heal if wounds developed as Dr. Diamond explained that the skin is an organ which can fail at the end of life.

Dr. Diamond opined that nothing the defendants did or did not do could have prevented the worsening or development of pressure ulcers or the decedent's subsequent death due to her numerous comorbidities which impaired her skin integrity and impeded her wounds from healing. The records establish that the pressure ulcers were identified, monitored, and treated. Continued wound care was provided.

While plaintiff argues that wound care was not provided after admission on December 8, 2016, this is not supported by the record. The medication administration records show that Santyl topical ointment was administered to the sacrum once a day starting December 9, 2016, and this treatment was subsequently changed to Silver Sulfadiazine on December 28, 2016.

If consistent wound care, turning/positioning, incontinence care, and bathing was not occurring, the decedent's wounds would have become very large and infected very quickly – neither of which occurred in this case as Dr. Diamond opined. Plaintiff does not address this in any way in her opposition.

In a medical malpractice action, it is not enough to simply prove there was negligence. There must also exist sufficient proof that the proven departures were the proximate cause of the injuries sustained. *Anderson v. Lamaute*, 306 A.D.2d 232 (2d Dept. 2003). Thus, plaintiff must establish that the alleged departures from accepted standards of care were substantial factors in bringing about the resulting injuries. *Mortensen v. Memorial Hosp*., 105 A.D.2d 151 (1st Dept. 1984).

Here, Dr. Diamond opined that the decedent was critically ill at the time of treatment and her overall medical condition, including several pre-existing comorbidities, multiorgan failure, which negatively affected her skin integrity, resulting in skin breakdown and preventing her skin's ability to heal.

The Lenox Hill records show that the decedent's health deterioration and ultimate death was caused by her end stage dementia, with multiorgan failure of cardiac, kidney, and lungs. The decedent also had severe aortic stenosis.

Plaintiff's opposition neither addresses the other causes of the decedent's decline nor Dr. Diamonds opinion that end-of-life wounds can develop as the skin, also an organ, begins to fail.

Finally, Public Health Law § 2801-d, "contemplates injury to the patient caused by the deprivation of a right conferred by contract, statute, regulation, code or rule, subject to the defense that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient." *Ciccotto v. Fulton Commons Care Ctr., Inc*., 149 A.D.3d 1030, 1031–32 (2d Dept. 2017). A defendant establishes a *prima facie* entitlement to judgment as a matter of law dismissing a claim under Public Health Law § 2801-d by submitting evidence that the patient's alleged injuries did not arise through any action or negligence of the defendant's employees.

As established in Dr. Diamond's affidavit, the care and treatment rendered to Ms. Clinton by the defendants was in accordance with good and accepted medical practice. Accordingly, there was nothing defendants did or didn't do that could have prevented the worsening or development of the decedent's pressure injuries or her subsequent unpreventable death.

With respect to the alleged violations of 42 CFR 483, plaintiff has failed to refute the opinions of Dr. Diamond that the decedent received good and reasonable care. Instead, plaintiff has offered a list of purported failures, without actually responding to Dr. Diamond's opinions and ignoring the overall condition of the decedent and how it impacted her skin. The expert affirmation of Dr. Diamond demonstrates that the pressure ulcers were unavoidable due to the patient's clinical condition. Thus, Plaintiff's claim pursuant to this statute fails. *See, e.g., Vargas*

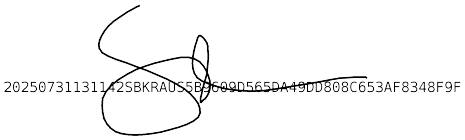
v. St. Barnabas Hosp.,168 A.D.3d 596 (1st Dept. 2019); *Craig v. St. Barnabas Nursing Home*, 129 A.D.3d 643 (1st Dept. 2015) (*finding that skin ulcers were unavoidable*).

WHEREFORE it is hereby:

ORDERED that defendants for summary judgment is granted and the complaint is dismissed in its entirety, with costs and disbursements to defendants as taxed by the Clerk; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of said defendants accordingly.

This constitutes the decision and order of the Court.



7/31/2025
DATE

SABRINA KRAUS, J.S.C.

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