

Occhigrossi v Poon

2025 NY Slip Op 32960(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 805178/2022

Judge: Arthur F. Engoron

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

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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MARIE OCCHIGROSSI,	INDEX NO. <u>805178/2022</u>
Plaintiff,	MOTION DATE <u>03/17/2025</u>
- v -	MOTION SEQ. NO. <u>001</u>

JOSEPH POON, NYC HEALTH &
HOSPITALS/GOUVERNEUR, NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents and for the reasons stated hereinbelow, defendants' motion for summary judgment, is denied in part and granted in part as follows.

Background

This medical malpractice action arises out of treatment that defendants, Joseph Poon ("Dr. Poon"), NYC Health + Hospitals/Gouverneur ("Gouverneur"), and New York City Health and Hospitals Corporation ("NYCHHC"), rendered to decedent, Louise Ianiello, a patient at Gouverneur. NYSCEF Doc. No. 1.

On June 9, 2021, employees of Gouverneur observed and began treatment of an excoriation of decedent's labia majora. NYSCEF Doc. No. 39 at 234. On June 10, 2021, Dr. Poon referred decedent to see a gynecologist on June 22, 2021, and Gouverneur employees observed and began treating a right lip abrasion on decedent's face. Id. at 233. On June 11, 2021, after observing decedent's confusion, deteriorating cognition, back pain, and a fungal rash on her mouth, Gouverneur employees scheduled blood work for decedent to be done on June 14, 2021. Id. at 212, 233.

On June 12, 2021, employees of defendant were unable to obtain decedent's blood pressure and noted "some change in mental status." Id. at 233. Dr. Poon was subsequently notified and ordered decedent's transfer to New York-Presbyterian Lower Manhattan Hospital (the "Hospital"). Id. NYSCEF Doc. No. 54 at 15. The Hospital's admitting diagnosis of decedent included septic shock and renal failure. NYSCEF Doc. No. 40. Decedent remained in the Hospital's care until June 14, 2021, when she was pronounced dead with the immediate cause listed as septic shock as a consequence of a urinary tract infection. NYSCEF Doc. No. 57.

On May 31, 2022, plaintiff, decedent's niece, filed the instant action against defendants, asserting four causes of action: (1) medical malpractice; (2) failure to obtain decedent's informed consent; (3) wrongful death and (4) violation of decedent's rights pursuant to Public Health Law § 2801-d. NYSCEF Doc. No. 1.

Defendant now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. NYSCEF Doc. No. 35. Defendant argues, inter alia, that: defendants did not depart from any standard of care by failing to investigate decedent's unindicated urinary tract condition; plaintiff's case is based on impermissible hindsight reasoning; decedent was not deprived of any rights contemplated by Public Health Law § 2801-d; informed consent violations require the performance of an invasive procedure; and that wrongful death requires underlying malpractice or negligence. NYSCEF Doc. No. 48.

In support, defendants submit an affirmation of medical expert Barry David Wenglin, MD, a board-certified doctor in infectious disease, opining, inter alia, that: decedent's overall condition did not indicate a need for an earlier transfer; treatment rendered to decedent by defendants did not depart from any standard of care; decedent's urinary tract infection was not indicated by any symptoms; and that there was no way to investigate an unindicated condition. NYSCEF Doc. No. 38.

In opposition, plaintiff submits an affirmation of her own medical expert, a board-certified doctor of geriatric medicine, opining, inter alia, that decedent's condition was indicated by her back pain, altered mental state, and excoriation of the labia. NYSCEF Doc. No. 52 at 5. Plaintiff's expert also noted that decedent's overall condition placed her at increased risk for urinary tract infection; that "good and accepted medical practice required that" a urinalysis was conducted on June 9; and that decedent was transferred to Hospital on June 11. *Id.* at 4, 9-10.

In reply, defendants assert that: experts cannot assume material facts not supported by evidence; liability for medical malpractice is not based on whether a provider reaches "best results"; claims based on supposition and hindsight are insufficient to raise issues of material fact; and that there exists no causal connection between the defendant's alleged wrongful act and decedent's death. NYSCEF Doc. No. 61.

Discussion

In order to obtain summary judgment, the

movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law. The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests' [M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient' for this purpose.

Gilbert Frank Corp. v Fed. Ins. Co., 70 NY2d 966, 967 (1988) (internal citations omitted).

Medical Malpractice

A defendant in a medical malpractice action establishes prima facie entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries. Once a defendant meets that burden, the plaintiff must rebut the prima facie showing via medical evidence attesting that the defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged.

Generally the opinion of a qualified expert that a plaintiff's injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants. To defeat summary judgment, the expert's opinion must demonstrate the requisite nexus between the malpractice allegedly committed and the harm suffered.

Anyie B. v Bronx Lebanon Hosp., 128 AD3d 1, 3 (1st Dept 2015) (internal citations and quotation marks omitted).

Here, plaintiff's expert asserts that decedent's urinary tract infection was indicated five days before her death and that defendants' failure to detect and treat the urinary tract infection was a departure from accepted medical practices and industry standards. Further, plaintiff maintains that defendants were on notice of decedent's susceptibility to urinary tract infections due to her medical history and condition on admission.

Defendants' expert asserts instead that decedent's symptoms were not indicative of a urinary tract infection, and that failing to investigate an unindicated condition was not a departure from accepted medical care. Defendants maintain that decedent's transfer did not deviate from accepted medical care.

Therefore, as there are issues of material fact as to whether the presence of a urinary tract infection was indicated by decedent's symptoms of back pain, excoriation, confusion, fatigue, and overall deterioration of mental status, and whether defendants' failure to observe such indication was the proximate cause of decedent's death, that part of defendants' motion to dismiss plaintiff's medical malpractice cause of action should be denied.

Informed Consent

Public Health Law § 2805-d(2) provides that a cause of action for "malpractice based on a lack of informed consent is limited to those cases involving either (a) non-emergency treatment, procedure or surgery, or (b) a diagnostic procedure which involved invasion or disruption of the integrity of the body."

“A cause of action alleging lack of informed consent requires an affirmative violation of physical integrity” of the affected party. S.W. v Catskill Regional Med Ctr., 211 AD3d 890, 891 (2d Dept 2022). Further, “[l]ack of informed consent does not apply where, as here, injuries allegedly resulted from a failure to undertake a procedure or a postponing of a procedure[.]” Id.

Here, there is nothing on the record that demonstrates any procedure rendered by defendants was violative or bodily invasive; nor was any procedure listed for which informed consent was required. Thus, that part of defendant’s motion to dismiss plaintiff’s informed consent cause of action should be granted.

Wrongful Death

A wrongful death cause of action requires an underlying instance of malpractice or negligence. As there is a dispute as to whether defendants departed from accepted medical care in their treatment of decedent, and whether that departure caused decedent’s demise, that part of defendant’s motion seeking to dismiss plaintiff’s wrongful death cause of action should be denied.

Public Health Law § 2801-d

A claim for violations of Public Health Law § 2801-d requires a deprivation of rights guaranteed by statute or contract. Defendants’ expert asserts that decedent was malnourished and dehydrated upon admission, and that there was no diminution of her clinical condition nor a lack of hydration, nutrients, or other deprivation of any rights under Public Health Law § 2801-d. Plaintiff’s expert asserts that such deprivation occurred and is evident in decedent’s substandard nutrition and hydration, demonstrated by a decline in decedent’s clinical condition, violative of 10 NYCRR 415.12(i) and 415.12(j). Thus, that part of defendants’ motion to seeking to dismiss plaintiff’s Public Health Law § 2801-d cause of action should be denied.

This Court has considered the parties other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, the instant motion of defendants, Joseph Poon, M.D., NYC Health + Hospitals, Gouverneur, and New York City Health and Hospitals Corporation, for summary judgment dismissing the complaint against them is hereby granted as to plaintiff’s second cause of action, informed consent, and is otherwise denied, and the Clerk hereby is directed to enter judgment accordingly.

HON. ARTHUR F. ENGORON



ARTHUR F. ENGORON, J.S.C.

7/25/2025
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	FIDUCIARY APPOINTMENT		