

**Shusterman v Frenkel**

2025 NY Slip Op 33574(U)

September 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 509858/2021

Judge: Consuelo Mallafre Melendez

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**At an IAS Term, Part 15  
of the Supreme Court of the State  
of NY, held in and for the County  
of Kings, at the Courthouse, at  
360 Adams Street, Brooklyn,  
New York, on the 23rd day of  
September 2025.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
LARISA SHUSTERMAN,

Plaintiff,

-against-

RUBIN FRENKEL, M.D., BAY OB/GYN, P.C., and  
VYACHESLAV B. FATTAKHOV, M.D.,

Defendants.

-----X  
**HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.**

Recitation, as required by CPLR § 2219 [[a], of the papers considered in the review:

NYSCEF #s: 117 – 119, 120 – 133, 147 – 149, 150 – 155, 156 – 157, 158 – 159

Defendant Vyascheslav B. Fattakhov, M.D. (“Dr. Fattakhov”) moves (Seq. No. 4) for an Order, pursuant to CPLR 3212, granting summary judgment in his favor and dismissing Plaintiff’s Complaint against him in its entirety.

Plaintiff opposes the motion.

Plaintiff commenced this action on April 28, 2021, against non-moving co-defendants Rubin Frenkel, M.D. (“Dr. Frenkel”) and Bay Ob/Gyn, P.C. (“Bay Ob/Gyn”). Plaintiff’s Complaint was amended on May 19, 2021 to add anesthesiologist Dr. Fattakhov as a party defendant, asserting claims of general negligence, medical malpractice, and lack of informed consent against him.

Plaintiff’s claims arise from treatment and care rendered on March 27, 2021, when she underwent a hysteroscopy with biopsy at Bay OB/GYN, performed by Dr. Frenkel with

anesthesia provided by Dr. Fattakhov. Following the procedure, Plaintiff alleges that she sustained injuries from a fall while still under the effects of the anesthesia.

Plaintiff was 50 years old at the time of the events at issue. She presented to Dr. Frenkel at Bay Ob/Gyn for an annual exam with complaints of pelvic pain and perimenopausal bleeding for the last 2-3 weeks. A hysteroscopy and biopsy for suspected polyps was recommended.

On March 27, 2021, Plaintiff underwent the hysteroscopy with biopsy. Dr. Fattakhov provided anesthesia for the procedure. He administered the first dose of propofol to Plaintiff at approximately 9:15 a.m., and the procedure was completed at 9:35 a.m. Plaintiff's adult son was waiting outside in the car to take her home but never entered the facility.

At approximately 9:50 a.m., Plaintiff was assisted from the procedure room to the recovery room by Dr. Fattakhov. Dr. Fattakhov signed a post-operative anesthesia note, recording her blood pressure, heart rate, respiratory rate, and oxygen saturation. He also signed the recovery room discharge note, affirming she was "stable for discharge with an escort." Plaintiff then saw Dr. Frenkel for an "exit interview" and discharge instructions, according to Dr. Frenkel's testimony.

As she left the ob/gyn office, Plaintiff fell down the exit stairs. She was assisted by other patients and a receptionist after her fall, then continued outside to meet her son. She testified that her son initially drove her home, but because her leg continued to hurt, he took her to an urgent care later that day. She subsequently received an MRI and treatment for a left ankle sprain and ligament tears.

Plaintiff alleges that the defendants in this action, including anesthesiologist Dr. Fattakhov, departed from good and accepted medical standards by allowing her to leave the office unescorted and under the effects of anesthesia. Plaintiff also alleges that she was not

adequately informed of the risks and hazards of the anesthesia. She alleges that this was a proximate cause of the injury she sustained falling in the stairway.

As an initial matter, the movant argues in their memorandum of law that the first cause of action for “general negligence” against Dr. Fattakhov should be dismissed, as Plaintiff’s claims against him are grounded in medical malpractice.

“The distinction between medical malpractice and negligence is a subtle one, for medical malpractice is but a species of negligence and no rigid analytical line separates the two” (*Rabinovich v Maimonides Med. Ctr.*, 179 AD3d 88, 92 [2d Dept 2019] [internal quotation marks and citations omitted]). “The critical question in determining whether an action sounds in medical malpractice or simple negligence is the nature of the duty to the plaintiff which the defendant is alleged to have breached” (*Wesolowski v St. Francis Hosp.*, 175 AD3d 1461, 1462 [2d Dept 2019], quoting *Halas v Parkway Hosp., Inc.*, 158 AD2d 516 [2d Dept 1990]). “A negligent act or omission by a health care provider that constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician to a particular patient constitutes medical malpractice. When the gravamen of the complaint is not negligence in furnishing medical treatment to a patient, but the failure to fulfill a different duty, the claim sounds in ordinary negligence.” (*Rabinovich* at 93 [internal citations omitted].)

Here, Plaintiff’s claims against Dr. Fattakhov are grounded in his duty to her as a physician rendering anesthesia services. Any issues before the jury regarding Dr. Fattakhov would involve or bear a “substantial relationship” to that medical treatment, including whether he appropriately obtained informed consent, administered the anesthesia, evaluated her post-operative condition, and discharged her. Although not completely determinative on this issue, the parties have submitted expert opinions on whether his actions complied with the standard of care for an anesthesiologist.

Furthermore, Plaintiff does not oppose the branch of the motion seeking to dismiss the claims of general negligence against Dr. Fattakhov, and they do not address this issue in their attorney affirmation or memorandum of law. Therefore, summary judgment is granted to Dr. Fattakhov on the ordinary negligence claims without opposition.

The movant also argues that any claims of negligent hiring/supervision should be dismissed against Dr. Fattakhov as a matter of law. There are no facts in the record or allegations that Dr. Fattakhov had a relationship *as the employer or supervisor* of any parties or non-parties liable in this action, and therefore this cause of action is not applicable to him. Plaintiff does not oppose or address the part of the motion seeking to dismiss those claims. Accordingly, summary judgment is **granted to the extent** of dismissing Plaintiff's general negligence and negligent hiring/supervision claims against Dr. Fattakhov, only.

Next, the Court must address the evidentiary issues raised by Plaintiff. Plaintiff argues in opposition that the medical records of Bay Ob/Gyn and Foot Ankle Surgeons of New York, attached in support of the motion, are not properly certified and must be disregarded. Without the support of certified medical records, Plaintiff argues that the movant's expert affirmation has no probative value.

In reply, the movant acknowledges that these records are not certified, but argues that a certified chart was not in their possession and was never provided by co-defendant Dr. Frenkel or Plaintiff. Further, the movant argues that these were the same records "that all parties used at the depositions," that Plaintiff's expert relied on the same records in opposition, and that deeming the medical record insufficient would be "extremely prejudicial to all parties."

Generally, "[t]he evidence submitted in support of summary judgment must be in a form admissible at trial" (*Midfirst Bank v Agho*, 121 AD3d 343, 347 [2d Dept 2014]), and once a prima facie showing is made, "the burden shifts to the party opposing the motion

for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324-325 [1986]).

Notwithstanding, uncertified medical records are not improperly considered in a summary judgment motion when “the plaintiff does not challenge the accuracy or veracity of the uncertified records and, in fact, she and her expert relied upon those records in opposition” (*Tomeo v Beccia*, 127 AD3d 1071, 1073 [2d Dept 2015]; *see also Arra v Kumar*, 200 AD3d 949, 949 [2d Dept 2021]; *Ward v Lincoln Elec. Co.*, 116 AD3d 558, 559 [1st Dept 2014]).

Plaintiff has challenged the submitted records as inadmissible on procedural grounds, but they do not challenge their authenticity, and the same records were referenced extensively by both parties’ experts. For this reason, and in the interest of deciding the instant motion on its merits and without prejudice to any party, the Court shall consider the medical records as relied upon by both the movant and Plaintiff’s experts.

Plaintiff also argues that the parties’ deposition transcripts are not in admissible form and should not be considered in this motion. The transcripts from Plaintiff and Dr. Frenkel, submitted as exhibits and referenced by Dr. Fattakov’s expert, were not signed by the deponents in compliance with CPLR 3316 (a), and the movant did not provide proof that a copy of the transcript was submitted for review and the deponent failed to sign it within 60 days (*see Franzese v Tanger Factory Outlet Centers, Inc.*, 88 AD3d 763, 763 [2d Dept 2011]).

However, the Second Department has held that this defect can be cured in reply by submitting proof that the certified transcript was in fact submitted to the deponent for review (*David v Chong Sun Lee*, 106 AD3d 1044, 1045 [2d Dept 2013] [“evidence demonstrating the defendant’s compliance with CPLR 3116[a] was properly considered in reply because it was submitted in direct response to allegations raised for the first time in the plaintiff’s opposition papers”]). In their reply, the movant stated the unsigned documents were uploaded erroneously,

and they attached the signed and notarized versions of the deposition transcript from Plaintiff and Dr. Frenkel. These transcripts are therefore admissible and may be considered in the summary judgment motion.

In evaluating a summary judgment motion in a medical malpractice action, the Court applies the burden shifting process as summarized by the Second Department: “[A] defendant must make a prima facie showing either that there was no departure from good and accepted medical practice, or that the plaintiff was not injured by any such departure” (*Rosenzweig v Hadpawat*, 229 AD3d 650, 652 [2d Dept 2024]). “In order to sustain this prima facie burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff’s complaint and bill of particulars” (*Martinez v Orange Regional Med. Ctr.*, 203 AD3d 910, 912 [2d Dept 2022]). “Once a defendant physician has made such a showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact, but only as to the elements on which the defendant met the prima facie burden. Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” (*Rosenzweig* at 652 [2d Dept 2024] [internal quotation marks and citations omitted].) However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023]).

In support of Dr. Fattakhov’s motion, as to medical malpractice and lack of informed consent, the movant submits an expert affirmation from Mark Abel, M.D. (“Dr. Abel”), a licensed physician board certified in anesthesiology.

The expert opines that within his role as the anesthesiologist, Dr. Fattakhov appropriately performed a pre-operative assessment and recorded her physical examination, vital signs, medical history and medications.

Dr. Abel states that there were no claims regarding the administration of anesthesia in Plaintiff's bill of particulars. Nonetheless, the expert does address the dosage and titration of medication administered. Based on the medical record and Dr. Fattakhov's testimony, Dr. Abel states that Dr. Fattakhov administered 360 mg of propofol through IV with additional Toradol for pain. He states that the first dose of propofol was given at approximately 9:15 a.m. and the last dose at 9:30 a.m. "about five minutes before" the end of the procedure, in increments of 160 mg, 80 mg, 60 mg, and 60 mg. He opines that this is an appropriate dosage, titrated to effect, for a procedure of this kind. He also opines that her oxygen saturation and other vital signs were appropriately monitored throughout the procedure with no complications, as documented in the intra-operative anesthesia record.

He opines that Dr. Fattakhov properly evaluated Plaintiff at 9:50 a.m. when he took her to the recovery room, documenting that her vital signs were stable, she was "alert, awake, oriented, breathing spontaneously," and she did not report any adverse effects of the anesthesia (Bay Ob/Gyn medical records at 13). Based on this, he opines that Dr. Fattakhov appropriately deemed her "stable for discharge home with an escort."

He opines that it was Dr. Frenkel who advised Plaintiff she needed a responsible adult to take her home, but Dr. Fattakhov "also inquired about an escort" according to his testimony regarding his usual practice (Dr. Fattakhov deposition tr at 126). He opines that this complied with the standard of care, noting that "an escort is required" due to the variability of lingering effects which "can include dizziness, weakness, amnesia, disorientation, nausea, [and] limited motor skills."

Dr. Abel opines that Dr. Fattakhov did not interact further with the patient after this recovery room evaluation, and he did not depart from the standard of care by leaving her in the recovery room "to get dressed on her own, while being monitored by Dr. Frenkel's staff." Once

she was dressed, Dr. Abel opines that the patient was “presumably able to walk on her own,” and she did walk unassisted to Dr. Frenkel’s office next to the recovery room. After speaking with Dr. Frenkel, the expert states that “she walked on her own volition without difficulty to reception” and “rather than wait for her escort as instructed, she decided to descend the stairs herself.” He opines that Dr. Fattakhov had no further duty as the anesthesiologist “to ensure that she had an escort waiting for her in the waiting room once he cleared her from anesthesia care, nor was it his responsibility to prevent the plaintiff from leaving.” The expert opines that Dr. Fattakhov appropriately relied on the “plaintiff’s representation that she had a responsible adult to escort her home,” and he further “relied on Dr. Frenkel and his staff to ensure that the plaintiff be safely discharged.”

Dr. Abel further opines that no departures from the standard of care from Dr. Fattakhov were a proximate cause of Plaintiff’s fall. Dr. Abel opines that recovery from propofol is “generally rapid and associated with less frequent side effects (e.g., drowsiness, nausea, vomiting)” in comparison to similar sedative medications. He opines that in general, the lingering effects of propofol can wear off within minutes, and in Plaintiff’s case it was “likely under [a] half-hour, as the anesthesia time was brief and the dose low.”

He acknowledges that the duration of effects can vary between patients, and lingering side effects “can include dizziness, weakness, amnesia, disorientation, nausea, [and] limited motor skills.” He states that Plaintiff’s claim that the anesthesia was the cause of her fall is speculative, because there is no proof her fall was caused “by effects of anesthesia as opposed to an accidental trip on the stairs.” He also opines that because Dr. Fattakhov properly determined she was “stable for discharge with an escort,” he had “no reason to believe” she would leave unaccompanied.

Based on these submissions, the movant's expert has established prima facie entitlement to summary judgment on the issue of whether Dr. Fattakhov departed from the standard of care. Contrary to Plaintiff's argument in opposition, Dr. Abel's opinions are sufficiently detailed and supported by citations to the record, and he has laid a proper foundation to demonstrate his qualifications, background, and education to opine on the standard of care for an anesthesiologist. The expert establishes prima facie that Dr. Fattakhov's pre-operative assessment, administration of anesthesia, and post-operative evaluation and clearance for discharge was in accordance with the standard of care. Dr. Abel also sufficiently opined that the standard of care did not require Dr. Fattakhov, as Plaintiff's anesthesiologist, to confirm or oversee that she was "safely discharged" with a responsible adult, and he relied on Dr. Frenkel and his staff to fulfill that responsibility.

The Court notes that in their opposition papers, Plaintiff argued that the movants failed to include or discuss their Third Supplemental Bill of Particulars dated April 8, 2024, which alleged specific departures against Dr. Fattakhov including "Failing to properly administer anesthesia to Plaintiff prior to her undergoing the procedure on March 27, 2021; Failing to provide the correct type and dosage of anesthesia to Plaintiff prior to her undergoing the procedure on March 27, 2021; Failing to properly 'titrate to effect'; Failing to monitor vital signs, including heart rate, blood pressure, oxygen saturation, and respiratory function of Plaintiff during her procedure on March 27, 2021," and additional claims as to her post-operative care and monitoring. During oral argument before this Court on September 18, 2025, the movant conceded their handling attorney had received and overlooked this Bill of Particulars.

Notwithstanding, the movant's expert Dr. Abel fully addressed the substance of all the claims set forth in this Third Supplemental Bill of Particulars and established prima facie that Dr.

Fattakhov's treatment of Plaintiff before, during, and after the procedure complied with the standard of care.

On the issue of proximate causation, Dr. Abel opines that the duration of anesthesia effects including dizziness, disorientation, and limited motor skills is variable, but because Dr. Fattakhov complied with the standard of care by deeming her "stable for discharge with an escort" and he had no further responsibility to monitor her exit, no act or omission by him proximate cause of her injury. The burden therefore shifts to Plaintiff to raise a triable issue of fact.

In opposition, Plaintiff submits an expert affirmation from Suzanne Mankowitz, M.D. ("Dr. Mankowitz"), a licensed physician board certified in anesthesiology. She has laid a proper foundation of her qualifications and background to opine on the issues herein.

Dr. Mankowitz states that on March 27, 2021, Plaintiff was administered approximately 360 mg of propofol for sedation, and she was discharged prematurely "with an unsteady gait and without any responsible adult escort whatsoever." She opines that Dr. Fattakhov departed from the standard of care by clearing her for discharge without proper evaluation.

Dr. Mankowitz notes that there is a timing discrepancy between Dr. Fattakhov's testimony and the handwritten anesthesia record. While the movant's expert stated that the last dose was given around 9:30 a.m., the medical record appears to show doses administered from 9:15 a.m. to 9:45 a.m. It also includes the notations "Anesthesia Finish: 9:50 a.m." and "Total Anesthesia Time: 50 min." There is no indication in the record of what time he filled in and signed the post-operative anesthesia note, or how much time passed before signing the recovery room discharge note.

According to Plaintiff, the fall occurred shortly after 10:00 a.m. The expert opines that she was given insufficient time in the recovery room and cleared for discharge prematurely. The

expert disagrees with the movant's expert on the short duration of propofol, stating that "half-time applies to propofol infusions and this patient had rapid repeated boluses." Plaintiff's expert opines that her wake-up time would not be "under a half-hour" as stated by the movant's expert, and based on the doses and timing, she would still be under the effects of anesthesia when she left the office.

Plaintiff's expert opines that Dr. Fattakhov had an independent duty as the anesthesiologist to render post-operative care and monitor her recovery from anesthesia, stating the anesthesiologist can "adequately assess whether a patient recovers from anesthesia, as gynecologists typically have no training in this area."

Dr. Mankowitz opines that Dr. Fattakhov failed to properly assess Plaintiff's cognitive and motor functions before discharge. The expert notes her last recorded vitals were in the post-operative anesthesia note, showing decreased blood pressure and 94% oxygen saturation, alongside a box checked "arousable" rather than "awake." Dr. Fattakhov then signed a pre-typed discharge statement that she was "alert, awake, oriented . . . vital signs stable," but there is no documentation of her blood pressure, heart rate, oxygen saturation, respiratory rate, and cardiac rhythm once she was in the recovery room to confirm they had returned to baseline levels. The expert opines that she should not have been considered stable for discharge in that condition merely because she could be "assisted a few feet" to the recovery room.

Plaintiff's expert opines that merely looking at a patient without documenting any examination or discussion "is not a safe manner of evaluation," and that Dr. Fattakhov departed from the standard of care by clearing her for discharge without a complete assessment. She opines that the standard of care requires an evaluation of her recovery from anesthesia using established parameters or "scoring systems," including "blood pressure, heart rate, oxygen saturation, respiratory rate, motor skills, cognitive skills, pain, ability to ambulate safely, food

intake, nausea, pain, and urine output.” The expert opines that especially in consideration of Plaintiff’s preexisting conditions, which “included diabetes, tachycardia, and mitral valve prolapse,” there should have been a full assessment using the above parameters.

She also opines that “anesthesia should not be provided if a patient has no escort present to retrieve them,” and both physicians at the facility should have verified the patient had a responsible adult escort present. She states that patients under anesthesia “must be discharged with a responsible adult,” and ensuring the patient leaves with an escort “should be done in advance, at the time of admission, prior to sedation and prior to discharge.”

She disagrees with the opinion of the movant’s expert Dr. Abel that Dr. Fattakhov appropriately relied on Dr. Frenkel and his staff to manage her discharge, citing to the American Society of Anesthesiology guidelines. The guidelines, annexed to the opposition papers, state that discharge “is the responsibility of the anesthesiologist or other qualified physician.”

On proximate causation, she opines that Dr. Fattakhov’s departures from the standard of care resulted in Plaintiff falling in the stairway as she tried to exit the facility. She opines that “given the Plaintiff’s confused state” and “hasty discharge,” her fall was more likely than not a result of “her altered cognitive and motor abilities resulting from residual anesthetic effects.”

“When experts offer conflicting opinions, a credibility question is presented requiring a jury’s resolution” (*Stewart v. North Shore University Hospital at Syosset*, 204 AD3d 858, 860 [2d Dept. 2022], citing *Russell v. Garafalo*, 189 A.D.3d 1100, 1102 [2d Dept. 2020]).

“In order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant’s experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record” (*Coffey v Mansouri*, 209 AD3d 714, 716 [2d Dept 2022], quoting *Tsitrin v New York Community Hosp.*, 154 AD3d 994 [2d Dept 2017]).

Based on evaluation of the expert submissions, the Court finds Plaintiff has raised issues of fact on whether Dr. Fattakhov departed from the standard of care by failing to properly perform a post-operative evaluation and properly clearing the patient for discharge.

Plaintiff's expert also raises issues of fact on whether these departures were a proximate cause of her injuries. She opines that the lingering effects from the anesthesia and the alleged failure to properly evaluate her before discharge directly resulted in her fall and injuries.

Notwithstanding, the opinion of Plaintiff's expert that Dr. Fattakhov failed to verify she had an escort "present" prior to administering anesthesia and at the time of discharge is conclusory and unsupported by the record. It is not disputed that Plaintiff's escort was waiting outside the building prior to the procedure and when the anesthesiologist evaluated her. Plaintiff's expert does not articulate the applicable standard of care for an anesthesiologist to "ensure" that she left with the escort.

Additionally, the expert cites to American Society of Anesthesiologists guidelines, but these guidelines state explicitly that the "anesthesiologist *or* other qualified physician" is responsible for discharge. Although this does not support the expert's conclusory statement that "both" physicians should have ensured she left with her son, the Court notes that Dr. Fattakhov signed the recovery room note clearing her for discharge with a responsible adult, and the ob/gyn Dr. Frenkel signed the patient's discharge instructions on the following page.

Plaintiff's expert refers repeatedly to the "responsible adult" signature line on the *discharge instructions* form, which was signed by Plaintiff herself and not her son. However, that form was signed "in Dr. Frenkel's presence" and includes his signature, as the expert acknowledges, and it has no bearing on the liability of Dr. Fattakhov.

In sum, the Court finds the expert's opinions as to Dr. Fattakhov's failure to ensure she was discharged with a responsible adult are conclusory, speculative, and unsupported by the record.

Finally, Plaintiff's expert affirmation has also not raised any issues of fact as to the actual administration of anesthesia, including the dosage provided and monitoring of vital signs during the procedure. Plaintiff's expert provided no detailed rebuttal addressing the movant's prima facie showing on those claims.

Accordingly, the part of the motion seeking summary judgment in favor of Dr. Fattakhov on the medical malpractice cause of action is **granted to the extent** of dismissing any medical malpractice claims related to his administration of anesthesia and failure to confirm the patient had an escort prior to the procedure and prior to discharge, and summary judgment is **denied** with respect to the claims he failed to properly evaluate Plaintiff post-operatively before clearing her for discharge.

Turning to the issue of informed consent, this is a distinct cause of action for which the plaintiff must ultimately prove three elements: (1) that foreseeable risks, benefits, and alternatives to the treatment were not disclosed to the patient, (2) that a reasonably prudent person in the plaintiff's position would have declined the treatment if they knew of those risks, and (3) that the procedure was a proximate cause of the plaintiff's injuries (*see Figueroa-Burgos v Bieniewicz*, 135 AD3d 810, 811-812 [2d Dept 2016]). Therefore, "a defendant can establish entitlement to summary judgment by demonstrating that the plaintiff signed a detailed consent form after being apprised of alternatives and foreseeable risks, by demonstrating that a reasonably prudent person in the plaintiff's position would not have declined to undergo the surgery, *or* by demonstrating that the actual procedure performed for which there was no

informed consent was not a proximate cause of the injury” (*Pirri-Logan v Pearl*, 192 AD3d 1149 [2d Dept 2021] [internal citations omitted]).

In his expert affirmation, the movant’s expert Dr. Abel opines that Plaintiff was provided with a detailed consent form “outlining the risks, hazards, and various other information concerning the anesthesia.” The consent form, which was signed by the patient, included that IV MAC (monitored anesthesia care) with sedation carried the expected result of “reduced anxiety and pain, partial or total amnesia,” the risks of “unconscious state, depressed breathing, injury to blood vessels,” and the more uncommon but severe risks such as infection, paralysis, or death (*i see Bay Ob/Gyn medical records at 12*). The expert also opines that the alleged unconsented-to anesthesia was not a proximate cause of her injuries.

In opposition, the only expert opinion offered as to Plaintiff’s informed consent is that there is no time given on the consent form and the witness’s signature is not identified. Notwithstanding Plaintiff’s argument that she could not unequivocally recognize her signature or when the document was signed, Plaintiff fails to raise a genuine issue of fact as to the substantive elements of informed consent: whether the foreseeable risks and alternatives of anesthesia with sedation were disclosed to her.

Plaintiff’s counsel also argues in their affirmation and memorandum of law that Plaintiff was put under “general anesthesia” rather than “MAC with sedation,” and therefore the consent form she signed was inadequate. However, there is no support for this distinction in the expert affirmation as it relates to informed consent. The expert does not detail any additional foreseeable risks which were not properly disclosed to the patient.

In sum, the Court finds the conclusory and speculative arguments in opposition are insufficient to raise a genuine issue as to whether the foreseeable risks, benefits, and alternatives were disclosed to the patient prior to undergoing the procedure with anesthesia.

Additionally, Plaintiff did not raise an issue of fact as to whether her informed consent for the administration of anesthesia was a proximate cause of her fall and injuries. For these reasons, the part of Dr. Fattakhov's motion seeking summary judgment on the informed consent claim is **granted**.

Accordingly, it is hereby:

**ORDERED** that Dr. Fattakhov's motion (Seq. No. 4) for summary judgment is **granted to the extent** of dismissing any claims against Dr. Fattakhov for general negligence, negligent hiring/supervision, and lack of informed consent, and dismissing any claims of medical malpractice related to his pre-operative assessment, administration of anesthesia, and failure to ensure she had an escort, and the motion is **denied** with respect to the medical malpractice claims against Dr. Fattakhov related to his post-operative evaluation and clearance for discharge.

This constitutes the decision and order of this Court.

**ENTER.**



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**Hon. Consuelo Mallafre Melendez  
J.S.C.**