

**Shamailov v Rabovetskaya**

2025 NY Slip Op 33593(U)

September 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 526168/19

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 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 29 day of September, 2025.

P R E S E N T:

HON. ELLEN M. SPODEK,

Justice.

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DIANA SHAMAILOV, as Administratrix of the Goods,  
Chattels, and Credits of GREGOR SHAMAILOV, Deceased,

Plaintiff,

-against-

YEVGENIYA RABOVETSKAYA, M.D.,  
BORIS SAGALOVICH, M.D.,  
YEVGENY LITVAK, M.D.,  
ADVANCED PRACTICE OF MEDICINE, P.C.,  
BORIS SAGALOVICH, M.D., P.C.,  
NYU LANGONE HEALTH SYSTEM,  
NYU SCHOOL OF MEDICINE,  
NEW YORK UNIVERSITY, and  
NYU LANGONE HOSPITALS,

Defendants.  
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DECISION AND ORDER

Index No. 526168/19  
(consolidated with action under Index No. 522844/18)

Mot. Seq. Nos. 1-3 under Index No. 526168/19  
Mot. Seq. No. 3 under Index No. 522844/18

The following e-filed papers read herein:

Notice of Motion, Affirmations, and Exhibits Annexed . . . . .  
Affirmations in Opposition and Exhibits Annexed . . . . .  
Reply Affirmations . . . . .

NYSCEF Doc. Nos. under Index No. 526168/19:  
22-45; 46-62; 63-88  
92-96; 97-101; 102-106  
114; 115

Notice of Motion, Affirmations, and Exhibits Annexed . . . . .  
Reply Affirmations . . . . .

NYSCEF Doc. Nos. under Index No. 522844/18:  
59-76  
78; 79

Upon the foregoing papers in this consolidated action to recover damages for medical malpractice, wrongful death and lack of informed consent, and after oral argument held on August 4, 2025: (a) the joint motion of defendants Yevgeniya Rabovetskaya, M.D., and her medical practice Advanced Practice of Medicine, P.C. (collectively, “Dr. Rabovetskaya”), in Seq. No. 1 under Index No. 526168/19; (b) the motion of defendant Yevgeny Litvak, M.D. (“Dr. Litvak”), in Seq. No. 2 under Index No. 526168/19; (c) the joint motion of defendants

NYU Langone Health System, NYU School of Medicine, a Division of New York University (sued herein as NYU School of Medicine), New York University, and NYU Langone Hospitals (collectively, the “NYU defendants”) in Seq. No. 3 under Index No. 526168/19; and (d) the joint motion of defendants Boris Sagalovich, M.D., and his medical practice Boris Sagalovich, M.D., P.C. (collectively, “Dr. Sagalovich”), in Seq. No. 3 under Index No. 522844/18; in each instance, for an order, pursuant to CPLR 3212, granting them summary judgment dismissing all claims against them, are decided as follows.

On May 27, 2018, plaintiff’s decedent Gregor Shamailov (the “patient”), a long-term cigarette smoker, died from Stage IV metastatic adenocarcinoma of the lung at the age of 68. On November 13, 2018, plaintiff, as the administratrix of the patient’s estate, commenced an action against his primary care physician, Dr. Rabovetskaya; his gastroenterologist, Dr. Litvak; his pulmonologist, Dr. Sagalovich; and one of the NYU defendants under Index No. 522844/18. On December 2, 2019, plaintiff commenced a separate action against the other NYU defendants (specifically, NYU School of Medicine, New York University, and NYU Langone Hospitals) under Index No. 526168/19. By order, dated July 21, 2020, both actions were consolidated under Index No. 526168/19.

In the consolidated action, plaintiff alleged that Dr. Rabovetskaya, Dr. Litvak, Dr. Sagalovich, and the NYU defendants (individually and collectively) failed to timely diagnose and prevent the spread of the patient’s lung cancer, which resulted in his premature death. After discovery was completed and a note of issue was filed, Dr. Rabovetskaya, Dr. Litvak, and the NYU defendants timely moved for summary judgment in Seq. Nos. 1, 2, and 3,

respectively, under Index No. 526168/19, whereas Dr. Sagalovich timely moved for summary judgment in Seq. No. 3 under Index No. 522844/18.

“A defendant seeking summary judgment in a medical malpractice action must establish, prima facie, that he or she did not deviate from accepted standards of medical care or that his or her acts were not a proximate cause of any injury to the plaintiff.” *Jacob v Franklin Hosp. Med. Ctr.*, 188 AD3d 838, 839 (2d Dept 2020), *affd* 36 NY3d 1102 (2021). “[T]o defeat summary judgment, the nonmoving party need only raise a triable issue of fact with respect to the element of the cause of action or theory of nonliability that is the subject of the moving party’s prima facie showing.” *Stukas v Streiter*, 83 AD3d 18. 24 (2d Dept 2011). Thus, “where a defendant [healthcare provider], in support of [his or her] motion for summary judgment, demonstrates only that he or she did not depart from the relevant standard of care, there is no requirement that the plaintiff address the element of proximate cause in addition to the element of departure.” *Stukas*, 83 AD3d at 25 .

Here, Dr. Rabovetskaya, Dr. Litvak, Dr. Sagalovich, and NYU School of Medicine (in its capacity as the employer of Boris Sagalovich, M.D., since January 2018) (collectively, “defendants”) each have demonstrated, prima facie, their respective entitlement to summary judgment as a matter of law by way of deposition testimony, medical records, and the detailed expert affirmations of board-certified internist Vincent P. Garbitelli, M.D, board-certified gastroenterologist Michael Frank, M.D., triple board-certified internist, pulmonologist, and critical care specialist Keith Brenner, M.D., and another triple board-certified internist, pulmonologist, and critical care specialist Ian Newmark, M.D., on behalf of Dr. Rabovetskaya, Dr. Litvak, Dr. Sagalovich, and NYU School of Medicine (in its capacity as the employer of

Boris Sagalovich, M.D., since January 2018), respectively, that none of the defendants deviated from the accepted standards of medical care in failing to diagnose the patient's cancer, nor delayed in referring the patient for a chest CT scan. Defendants' experts each addressed and rebutted the specific allegations of medical malpractice set forth in the consolidated complaint and bills of particulars as to the particular defendants. *See Rodriguez v Avshalumov*, 238 AD3d 1082, 1083 (2d Dept 2025); *Mattocks v Ellant*, 231 AD3d 813, 816 (2d Dept 2024); *see also Allman v Roswell Park Cancer Inst. Corp.*, 239 AD3d 1341, 1342 (4th Dept 2025). The defense experts explained how and why defendants did not depart from good and accepted medical practice in their respective fields of medicine, and their affirmations contain sufficient factual detail with respect to the alleged medical malpractice and ensuing injuries and, in particular, that the patient was not complying with defendants' persistent (both written and oral) instructions to undergo a chest CT scan until after he relented and underwent a chest CT scan on November 20, 2017, which led to the diagnosis of his lung cancer. *See Micciola v Sacchi*, 36 AD3d 869, 871 (2d Dept 2007). Further, the NYU defendants established, without contradiction from plaintiff, that NYU School of Medicine (but no other NYU defendant) was the employer of Boris Sagalovich, M.D., with such employment commencing no earlier than in January 2018.

In opposition, plaintiff raised a triable issue of fact as to both the departure and the causation elements of her medical malpractice claim as against each of Drs. Rabovetskaya, Litvak, and Sagalovich (but not as against NYU School of Medicine or the other NYU defendants) by way of the board-certified internist/pulmonologist's Amended Expert Affirmation in Internal Medicine and Pulmonology and the board-certified gastroenterologist's Amended Expert Affirmation in Gastroenterology, with their names redacted but with the

unredacted copies previously provided to the Court for in camera inspection. Both affirmations (coupled with the deposition testimony and the patient's medical records, when viewed in a light most favorable to plaintiff as the non-movant) raised triable issues of fact as to whether Drs. Rabovetskaya, Litvak, and Sagalovich (individually and collectively) failed to take steps that would have led to an earlier diagnosis of the patient's lung cancer. *See Santiago v Abramovici*, 226 AD3d 720, 721 (2d Dept 2024); *Fiszer v Gliwa*, 223 AD3d 881, 883 (2d Dept 2024); *Stewart v North Shore Univ. Hosp. at Syosset*, 204 AD3d 858, 860 (2d Dept 2022); *Rhymes v Patel*, 139 AD3d 543, 544 (1st Dept 2016); *McManus v Lipton*, 107 AD3d 463, 464 (1st Dept 2013); *Mandel v New York County Pub. Adm'r*, 29 AD3d 869, 871 (2d Dept 2006). *See generally Neyman v Doshi Diagnostic Imaging Servs., P.C.*, 153 AD3d 538, 546 (2d Dept 2017) ("Whether a diagnostic delay affected a patient's prognosis is typically an issue that should be presented to a jury.") (internal quotation marks omitted). Where, as here, the "experts offer conflicting opinions, a credibility question is presented requiring a jury's resolution." *Russell v Garafalo*, 189 AD3d 1100, 1102 (2d Dept 2020) (internal quotation marks omitted). Given the conflicting expert affirmations, denial of the respective motions of Drs. Rabovetskaya, Litvak, and Sagalovich for summary judgment dismissing the medical malpractice and wrongful death claims as against them is appropriate. *See Allman*, 239 AD3d at 1342; *Russell*, 189 AD3d at 1102; *see also Powell v Oudkerk*, 237 AD3d 992, 995 (2d Dept 2025) ("[B]ecause the cause of action alleging wrongful death was premised on the defendant's alleged medical malpractice, the same conclusions apply [to both] cause[s] of action.") (internal quotation marks omitted).

Conversely, plaintiff failed to raise a triable issue of fact as to whether any of the defendants affirmatively violated the patient's physical integrity. *See Estate of Simeone v*

*Intermed Med. of NY, Inc.*, 237 AD3d 666, 668 (2d Dept 2025); *Thomas v Farrago*, 154 AD3d 896, 897 (2d Dept 2017), *lv dismissed* 30 NY3d 1093 (2018). Accordingly, the branches of defendants' respective motions which were for summary judgment dismissing so much of plaintiff's medical malpractice cause of action as was based on lack of informed consent are granted.

It is within the trial court's discretion to determine whether evidence is hearsay and, if so, whether the evidence is admissible under an exception to the hearsay rule. *See Rodriguez v Triborough Bridge & Tunnel Auth.*, 276 AD2d 769, 778 (2d Dept 2000), *appeal dismissed* 96 NY2d 814 (2001). It is likewise within the trial court's discretion to determine whether defendant physicians' conversations with the patient are (or are not) admissible under CPLR 4519. *See generally Weber v Sharma*, 232 AD3d 930, 932 (2d Dept 2024).

The Court has considered the parties' remaining contentions and found them either moot or without merit in light of its determination. All relief not expressly granted is denied.

Based on the foregoing, it is

**ORDERED** that, in Seq. No. 1 under Index No. 526168/19, the joint motion of defendants Yevgeniya Rabovetskaya, M.D., and Advanced Practice of Medicine, P.C., is granted to the extent that so much of plaintiff's medical malpractice cause of action against them as was based on lack of informed consent is dismissed, and the remainder of their motion is denied; and it is further

**ORDERED** that, in Seq. No. 2 under Index No. 526168/19, the motion of defendant Yevgeny Litvak, M.D., is granted to the extent that so much of plaintiff's medical malpractice

cause of action against him as was based on lack of informed consent is dismissed, and the remainder of his motion is denied; and it is further

**ORDERED** that, in Seq. No. 3 under Index No. 526168/19, the joint motion of defendants NYU Langone Health System, NYU School of Medicine, a Division of New York University (sued herein as NYU School of Medicine), New York University, and NYU Langone Hospitals is granted in its entirety, the consolidated complaint is dismissed against each of these defendants with prejudice and without costs/disbursements, and the consolidated action is severed and continued against the remaining defendants; and it is further

**ORDERED** that, in Seq. No. 3 under Index No. 522844/18, the joint motion of defendants Boris Sagalovich, M.D., and Boris Sagalovich, M.D., P.C., is granted to the extent that so much of plaintiff's medical malpractice cause of action against them as was based on lack of informed consent is dismissed, and the remainder of their motion is denied; and it is further

**ORDERED** that to reflect the dismissal of the NYU defendants from this action, the caption is amended to read in its entirety as follows:

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DIANA SHAMAILOV, as Administratrix of the Goods,  
Chattels, and Credits of GREGOR SHAMAILOV, Deceased,

Plaintiff,

-against-

Index No. 526168/19

YEVGENIYA RABOVETSKAYA, M.D.,  
BORIS SAGALOVICH, M.D.,  
YEVGENY LITVAK, M.D.,  
ADVANCED PRACTICE OF MEDICINE, P.C., and  
BORIS SAGALOVICH, M.D., P.C.,

Defendants.

-----X

; and it is further

**ORDERED** that the NYU defendants' counsel is directed to electronically serve a copy of this Decision and Order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision and Order of the Court.

ENTER,



J. S. C.

**HON. ELLEN M. SPODEK**