

Callen v Baer

2025 NY Slip Op 34001(U)

February 14, 2025

Supreme Court, Queens County

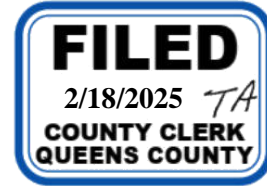
Docket Number: Index No. 715323/2019

Judge: Tracy Catapano-Fox

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Short Form Order
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS



-----X
MICHELLE CALLEN and WILLIAM CALLEN,

Index No. 715323/2019

Plaintiffs,

Part MDP

Motion Date: January 8, 2025

-against-

Calendar No. 8

Sequence No. 4

ASHER BAER, M.D., MICHAEL SHERMAN, M.D.,
ATIF H. FAROOQI, D.O., SHANNON LANCASTER,
M.D., HANNA CZARKOWSKA, M.D., EBONY
BROMFIELD, P.A., CHRISTOPHER CARLEO, M.D.,
FADI Z. EL-BABA, M.D., VLADIMIR STAMORAN,
M.D., TEHMINA HAQUE, M.D., BRIAN WRIGHT,
M.D., RISHI MEHTA, M.D., and LAMAH
MASSASATI, M.D.,

Defendants.

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The following papers numbered EF-214 to EF-276 read on this motion by defendant ATIF H. FAROOQUI, D.O. for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212.

Papers
Numbered

Notice of Motion, Affirmation, Exhibits.....	EF214-EF226
Affirmation in Opposition, Exhibits.....	EF259-EF262
Reply Affirmation.....	EF276

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendant Atif H. Farooqui, D.O.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted. Plaintiffs commenced this medical malpractice action arising out of plaintiff Michelle Callen's admission to the emergency room of Stony Brook University Hospital (hereinafter referred to as "SBUH") on March 9, 2017, and subsequent admission from March 10, 2017 through March 17, 2017. Plaintiffs filed the Summons

and Complaint on September 5, 2019 and issue was joined by moving defendant via the filing of the Verified Answer.

Defendant Dr. Farooqui argues he is entitled to summary judgment and present the pleadings, plaintiff Michelle Callen's medical records, the parties' deposition testimony, and the expert affirmations of Dr. A. James Ciaccio, M.D., FACEP and Dr. Floyd Warren in support of his motion. Defendant argues Dr. Farooqui was the attending physician in the emergency department upon plaintiff Michelle Callen's presentment on March 9, 2017 and he timely evaluated plaintiff and directed appropriate work up, including labs, CT of the head, emergent neurology consultation and emergent ophthalmology consultation. Dr. Farooqui further argues none of his actions or inactions proximately caused plaintiff's injuries, including blindness. He further argues plaintiffs' claim of lack of informed consent should be dismissed as meritless based upon the evidence.

Defendant presents the affirmation of Dr. Ciaccio in support of his motion. Dr. Ciaccio affirmed to be a physician licensed to practice law in New York who is board certified in emergency medicine. He affirmed to be fully familiar with the applicable standards of care based upon his education, training and experience, and reviewed the pleadings, parties' deposition testimony and medical records in rendering opinions. Dr. Ciaccio opined within a reasonable degree of medical certainty that Dr. Farooqui did not depart or deviate from the standard of care in the one hour and eighteen minutes plaintiff Michelle Callen was under his care, and none of his actions or inactions proximately caused plaintiff Michelle Callen's injuries.

Dr. Ciaccio opined Dr. Farooqui properly evaluated and examined plaintiff Michelle Callen when she presented to the emergency department on March 9, 2017 with a change in vision and bloody stools. He opined Dr. Farooqui appropriately performed a physical examination and properly formulated a differential diagnosis of acute unilateral central vision loss, and he appropriately established a plan to assess ophthalmologic vs. central vision loss etiology. Dr. Ciaccio noted Dr. Farooqui's shift ended at midnight, after which Dr. Baer and PA Bromfield took over plaintiff Michelle Callen's care. He further noted Dr. Farooqui and Dr. Baer discussed plaintiff Michelle Callen's pertinent findings as part of the sign-off process, including her vision loss, GI bleeding, and Dr. Farooqui informed Dr. Baer that a neurology and ophthalmology consult had been ordered.

Dr. Ciaccio opined within a reasonable degree of medical certainty that Dr. Farooqui fully complied with the standard of care, and he did not depart or deviate from good or accepted medical practices in connection with the care and treatment he rendered to plaintiff Michelle Callen. Dr. Ciaccio opined the standard of care required a workup to include a physical examination, ordering of labs, imaging and consults with neurologists and ophthalmologists to determine the etiology of her complaints. He opined Dr. Farooqui complied with the above, by timely and appropriately

performing a physical examination, the findings of which were unremarkable except for disturbance of left eye vision. Dr. Ciaccio also opined Dr. Farooqui appropriately ordered labs that were timely drawn, and a CT was properly ordered to rule out a stroke or neurologic etiology for plaintiff Michelle Callen's complaints. He also opined Dr. Farooqui timely and appropriately ordered a neurological consult to rule out a potential neurological problem, and timely and properly ordered an ophthalmological consult to assess plaintiff Michelle Callen's complaints of visual disturbance.

Dr. Ciaccio opined that in light of plaintiff Michelle Callen's stable clinical presentation and vitals, her denial of shortness of breath, headaches, speech difficulties or slurring, Dr. Farooqui acted within the standard of care in ordering CT of the head, labs and consultations for plaintiff's workup to be completed by Dr. Baer as the incoming attending physician and subsequent consultants. He opined Dr. Farooqui did not depart from the standard of care in not ordering a gastroenterology consultation because plaintiff Michelle Callen was hemodynamically stable and not in distress, despite complaints of an earlier bloody bowel movement. He noted plaintiff Michelle Callen informed Dr. Farooqui that she intended to follow up with her GI, and opined this implied her GI bleed was chronic in nature, and not acute, and the proper treatment would be outpatient evaluation.

Dr. Ciaccio opined Dr. Farooqui did not depart from the standard of care in not ordering a blood transfusion, as plaintiff Michelle Callen was not suffering from bleeding upon her presentment to the emergency department, and the standard of care did not require a blood transfusion. Dr. Ciaccio opined symptoms of acute blood loss include shortness of breath, persistent fatigue and rapid heart rate, none of which plaintiff Michelle Callen presented, and she was asymptomatic for anemia. Dr. Ciaccio opined based upon plaintiff Michelle Callen's blood levels that she was not hemodynamically unstable on the evening of March 9, 2017, and Dr. Farooqui did not treat her after midnight. Dr. Ciaccio opined Dr. Farooqui acted within the standard of care by documenting his findings, his plan and orders, and communicating with Dr. Baer at the time of the shift change. He noted Dr. Baer testified Dr. Farooqui did not communicate plaintiff Michelle Callen's complaints of bloody bowel movements, but opined the triage notes, nurse's notes, and attending notes documented this information and was available to Dr. Baer. Dr. Ciaccio opined within a reasonable degree of medical care that Dr. Farooqui rendered care and treatment to plaintiff Michelle Callen within the standard of care, and nothing he did was a proximate cause of any alleged injuries.

Defendant Dr. Farooqui also presented the affirmation of Dr. Warren in support of his motion. Dr. Warren affirmed to be a physician licensed to practice medicine in New York who is board certified by the American Board of Ophthalmology. He affirmed to be fully familiar with the pathogenesis and clinical features of ischemic optic neuropathies. Dr. Warren relied upon his education, training and experience, as well as a review of the pleadings, parties' deposition

testimony and medical records in rendering opinions. Dr. Warren opined within a reasonable degree of medical certainty that plaintiff Michelle Callen's injuries, including bilateral vision loss, were not caused by any alleged departures by defendants. He opined plaintiff Michelle Callen's ischemic optic neuropathy initially developed from a hemorrhage that began prior to her presentment at SBUH emergency department on the evening of March 9th. Dr. Warren further opined there was nothing that could be done by defendants during either emergency department presentation that would have restored plaintiff Michelle Callen's vision loss up to that point. He opined defendants provided adequate and appropriate treatment while in the emergency department, as there is no evidence she sustained additional vision loss. Dr. Warren opined within a reasonable degree of medical certainty that no act or omission by moving defendants caused the advancement of plaintiff Michelle Callen's bilateral optic neuropathy or other claimed injuries. Based upon the above, defendant Dr. Farooqui argues summary judgment is warranted.

Plaintiffs oppose defendant Dr. Farooqui's motion, arguing there are issues of fact in dispute that demonstrate defendants' common departures from accepted medical practice by failing to treat plaintiff Michelle Callen's sudden loss of vision as an ophthalmologic emergency. They rely on the exhibits attached to defendant's motion and submit expert affirmations in support of their opposition. Plaintiffs argue defendant Dr. Farooqui failed to appropriately treat plaintiff Michelle Callen within the standard of care, and his departures led to hypoxia, metabolic stress, and eventually cell death and optic nerve damage.

Plaintiffs' expert affirmed to be a licensed physician in New York, who is board certified in Ophthalmology. The expert reviewed plaintiff Michelle Callen's medical records and defendants' summary motion with expert affirmation in rendering opinions in this case. Plaintiffs' expert noted plaintiff Michelle Callen woke on March 9, 2017 at 9:30pm with a visual change in her left eye, a new and first time occurrence for the 54 year old woman. The expert noted she presented to the SBUH emergency room at 10:42pm, and was seen first by Dr. Farooqui. Dr. Farooqui spoke with plaintiff Michelle Callen and noted she presented to the emergency department with left eye partial vision loss, denied eye pain, numbness, tingling, weakness, dizziness or change in speech but stated she had a few bowel movements that were "all blood." The medical records showed Dr. Farooqui ordered blood work that was taken at 11:05pm, and ordered neurology and ophthalmology consults at 11:24pm on an emergent basis. Dr. Farooqui also implemented a stroke protocol with radiological testing, and a type and screen for possible blood transfusion. Plaintiffs' expert noted Dr. Farooqui's plan was an acute unilateral central vision loss and suspected plaintiff Michelle Callen may have a central retinal artery occlusion, considered a stroke of the eye. The expert further noted Dr. Farooqui's shift ended at midnight, and he did rounds with Dr. Baer to review the transfer of the emergency department patients, including plaintiff Michelle Callen. Plaintiffs' expert noted a discrepancy between Dr. Farooqui and Dr. Baer with regard to whether Dr. Farooqui informed Dr. Baer about plaintiff Michelle Callen's rectal bleeding complaint. Dr. Farooqui testified it was his custom and practice to discuss

all pertinent findings with the incoming shift during rounds or sign out process, but Dr. Baer testified Dr. Farooqui did not inform him of bleeding and he did not review the notes.

Plaintiffs also presented the affirmation of a physician licensed to practice medicine in New York who is board certified in Internal Medicine. The expert reviewed plaintiff Michelle Callen's medical records, the pleadings, and the parties' deposition testimony in rendering opinions, as well as professional education, training and experience. Plaintiffs' expert opined Dr. Farooqui departed from the standard of care by failing to order a gastroenterology consult, despite his knowledge that plaintiff Michelle Callen was experiencing a gastrointestinal bleed which could be connected to her acute neurological deficit. The expert further opined this departure was a substantial factor in delaying the recognition and correction of the rectal bleeding that was directly informing the blood loss anemia/hypotension. Plaintiffs' expert further opined it was indefensible for Dr. Farooqui to downgrade plaintiff Michelle Callen's condition to a transient ischemic attack without the benefit of lab work and consultants' recommendations.

Plaintiffs' expert opined Dr. Farooqui departed from the standard of care in failing to perform a rectal examination. The expert noted Dr. Farooqui testified his custom and practice is to perform a digital rectal exam when suspecting a GI bleed, and attributed the lack of documentation to nothing remarkable found. However, the expert opined the lack of documentation made it likely it did not occur, as a patient with a GI bleed and positive or negative rectal exam are pertinent findings that must be documented. Plaintiffs' expert further opined a digital rectal exam if performed carried a high likelihood of discovering hemorrhoids which would have included medical intervention aimed at arresting the rectal bleed earlier, and obviated the need for blood transfusions allowing for a more stable recovery of plaintiff Michelle Callen's anemia and hypotension. Plaintiffs' expert disagreed with Dr. Ciaccio's opinion, and argued Dr. Farooqui's differential was incomplete, his diagnosis was incomplete, and his plan of management was incomplete. The expert further opined Dr. Farooqui's departures were substantial factors that delayed the actual diagnosis and emergency treatment needed by plaintiff Michelle Callen to save her vision.

Plaintiffs' expert opined Dr. Farooqui departed from the standard of care by failing to act on his suspicion of acute blood loss anemia, and this departure was a substantial factor in delaying the appropriate diagnosis and treatment to arrest the bleeding and normalize the blood values and pressure. The expert further opined Dr. Farooqui had a duty and obligation to ensure the next shift was aware of open issues, including tests and labs, as the results might change the plan of management. Plaintiffs' expert also disagreed with Dr. Ciaccio that plaintiff Michelle Callen was hemodynamically stable in the emergency department on the night of March 9, 2017. The expert further opined Dr. Farooqui departed from accepted medical practice by failing to call a Code Brain Attack Team, as a patient with a suspected stroke would have benefited from multidisciplinary evaluation within minutes. The expert opined Dr. Farooqui's departures in

conjunction with co-defendants' departures in failing to recognize the urgency of plaintiff Michelle Callen's medical condition after ruling out a neurological cause proximately caused her injuries. Plaintiffs' expert opined Dr. Farooqui departed from accepted medical practice, and his departures were substantial factors in plaintiff Michelle Callen's damages of bilateral blindness with no light perception. Based upon the above, plaintiffs argue summary judgment is not warranted.

Pursuant to CPLR §3212, a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (*Smith v. City of New York*, 210 A.D.3d 53, 68 [2d Dept. 2022].) The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. (*Morejon v. New York City Tr. Auth.*, 216 A.D.3d 134, 136 [2d Dept. 2023].) If there is any doubt as to the existence of a triable issue of fact, the motion must be denied. (*Id.*) The failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposition papers. (*Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]; *see also Antonyuk v. Brightwater Towers Condo Homeowners' Assn., Inc.*, 147 A.D.3d 711, 712 [2d Dept. 2017].) In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party. (*Matter of New York City Asbestos Litig.*, 33 N.Y.3d 20, 25 [2019].) Additionally, the court's function in determining a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. (*Reyes v. S. Nicolio & Sons Realty Corp.*, 212 A.D.3d 851, 852-853 [2d Dept. 2023].) Once the moving party has demonstrated a prima facie entitlement to summary judgment, the burden then shifts to the non-moving party to demonstrate the existence of material issues of fact. (*See generally Coscia v. Mosca*, 203 A.D.3d 695 [2d Dept. 2022].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff's claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].)

Defendant Dr. Farooqui established a prima facie entitlement to summary judgment through the production of the documentary evidence and affirmations of Dr. Ciaccio and Dr.

Warren that he rendered care and treatment within the standard of care and did not proximately cause plaintiff Michelle Callen's injuries. (*See Ortiz v. Wyckoff Hgts. Med. Ctr.*, 149 A.D.3d 1093 [2d Dept. 2017].) Defendants demonstrated through Dr. Ciaccio's affirmation that Dr. Farooqui rendered appropriate care and treatment for plaintiff Michelle Callen during her initial presentment to the emergency department for the one hour and eighteen minutes he was responsible for her care. Dr. Ciaccio demonstrated Dr. Farooqui performed an appropriate examination and evaluation of plaintiff Michelle Callen, and appropriately ordered lab tests, imaging and consultations with neurology and ophthalmology. Defendant demonstrated he properly documented plaintiff Michelle Callen's complaints of left eye vision loss and bloody bowel movements, and properly ordered testing and imaging to address these complaints. Dr. Farooqui demonstrated he properly created a differential diagnosis of plaintiff Michelle Callen's that took into account her complaints of left eye vision changes and bloody bowel movements. Dr. Ciaccio demonstrated Dr. Farooqui did not depart from the standard of care, as it was necessary to first rule out a stroke based upon plaintiff Michelle Callen's complaints. Dr. Ciaccio further demonstrated the emergency department properly pursued a course of treatment to rule out a stroke, a central cause of vision loss. He also demonstrated Dr. Farooqui properly transferred care for plaintiff Michelle Callen to Dr. Baer and PA Bromfield, noting her pertinent complaints and findings in communications and in attending physician notes. Dr. Ciaccio further opined a gastroenterology consult was not indicated during the one hour and eighteen minute period during which Dr. Farooqui cared for plaintiff Michelle Callen, and any allegations by plaintiffs with regard to downgrading her care or other failures in treatment are the responsibility of co-defendants. Defendant Dr. Farooqui further demonstrated there is no evidence for which he could be liable for lack of informed consent regarding plaintiff Michelle Callen.

Plaintiffs failed to raise triable issues of fact with regard to Dr. Farooqui, as their experts failed to sufficiently articulate departures from the standard of care that proximately caused plaintiffs' injuries. Plaintiffs' experts' opinions were conclusory and vague with regard to Dr. Farooqui, as they failed to address the medical records that showed he ordered neurology and ophthalmology consults, blood work and testing emergently in the brief period of time during which he was treating plaintiff Michelle Callen. They also failed to demonstrate how any alleged departures by Dr. Farooqui proximately caused plaintiff Michelle Callen's subsequent vision loss, as he was briefly involved in her care and acted appropriately within the standard of care for emergency management. Rather, plaintiffs' expert opinions acknowledge the appropriate plan of care and treatment provided by Dr. Farooqui, and most of the concerns are departures best alleged against co-defendants, who were more substantively involved in plaintiff Michelle Callen's care. Plaintiffs' experts' opinions regarding lack of rectal examination are conclusory and fail to demonstrate causation, as do their opinions regarding failure to perform blood transfusions on the night of March 9th. As their opinions regarding Dr. Farooqui were conclusory and unsupported by the evidence, summary judgment is appropriate. Plaintiffs also failed to raise any triable issues of fact with regard to their claims of lack of informed consent, as they presented no expert opinions

or other evidence to support this cause of action.

Accordingly, defendant Atif H. Farooqui, D.O.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted, and plaintiffs' Complaint is dismissed as to Dr. Farooqui. The parties shall appear on Wednesday, March 5, 2025 at 9:30am in Courtroom 48 for a pretrial conference.

Dated: February 14, 2025

Tracy Catapano-Fox

Hon. Tracy Catapano-Fox, J.S.C.

