

**Matthews v NYU Langone Hosps.**

2025 NY Slip Op 34026(U)

October 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 501767/2021

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 16th day of October 2025.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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CARMEN RIVERA MATTHEWS as Administrator of the Estate of TIMOTHY MATTHEWS, and CARMEN RIVERA MATTHEWS, Individually,

Plaintiffs,

-against-

NYU LANGONE HOSPITALS, NYU LANGONE HEALTH SYSTEMS, CAREY LI, M.D., THE CITY OF NEW YORK, JAMES PARRISH, and CHRISTIAN HANSEN,

Defendants.

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

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

NYSCEF #s: 67 – 68, 69 – 87, 89 – 90, 91 – 93, 94 – 95

Defendants NYU Langone Hospitals, NYU Langone Health System (sued herein as “NYU Langone Health Systems”), and Carey Li, M.D. (“Dr. Li”) move for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing all claims and cross claims against them in this action (Seq. No. 5).

Plaintiff opposes the motion.

Co-defendants The City of New York, James Parrish, and Christian Hansen do not oppose the part of the motion seeking to dismiss their cross claims against the movants, and that part of the motion is **granted** without opposition.

Plaintiff commenced this action, as administrator of Decedent's estate, on January 22, 2021, asserting claims of medical malpractice and wrongful death against the moving defendants. Plaintiff also asserts derivative claims for loss of services, support, and consortium.

Decedent was 60 years old at the time of the events at issue. He was a former smoker and had a history of asthma, sarcoidosis (inflammation of the lungs), heart failure, hypertension, and diabetes. He had been hospitalized on various occasions from 2014-2018 for asthma flare-ups.

On January 3, 2020 at 8:22 p.m., Decedent presented to a NYU Langone Hospitals emergency department with a cough, shortness of breath, and wheezing. He was admitted overnight, demonstrated improvement of breathing and oxygen saturation with asthma therapies, and discharged on January 4 at approximately 2:30 p.m. with an 8-day tapered prescription of prednisone.

Decedent returned to the emergency department on January 10, 2020 at 5:39 p.m. He reported abdominal pain, cold-like symptoms, generalized weakness and malaise, and coughing. On examination, he had an elevated fever, tachycardia, and shortness of breath with wheezing.

A venous blood gas test at 6:30 p.m. revealed elevated venous pH and HCO<sub>3</sub>. Decedent was administered antipyretics and nebulizers and tested positive for Influenza A by nasal swab. He was noted to be ambulatory without dyspnea, prescribed Tamiflu, and discharged at approximately 8:20 p.m. by the attending physician, Dr. Li.

The following afternoon, EMS responded to a 911 call at Decedent's home at 3:36 p.m. He was experiencing shortness of breath, coughing, and wheezing. He lost consciousness and went into cardiac arrest on the way to the hospital. Upon arrival at NYU Langone, he was resuscitated and spontaneous circulation returned after approximately 20 minutes.

Following his resuscitation, Decedent remained intubated, unresponsive to commands or stimuli, and without corneal or gag reflexes. On January 15, his family consented to DNR/DNI and palliative care due to his poor prognosis. He was extubated on January 29 and passed away on January 30.

Plaintiff alleges that attending physician Dr. Li departed from the standard of care in the evaluation, treatment, and discharge of Decedent on January 10. Plaintiff further alleges that these departures proximately caused the worsening of his asthma exacerbation, cardiac arrest, hypoxic/anoxic brain injury, and death.

Plaintiff's claims against NYU Langone Hospitals and NYU Langone Health System arise from their alleged vicarious liability for Dr. Li and other emergency department physicians, nurses, and staff.

As an initial matter, NYU Langone Health System moves for summary judgment on the basis that they are not a proper party in this action. The movants state that "the treatment at issue took place in the emergency department of NYU Langone Hospitals." They concede that NYU Langone Hospitals is a "proper defendant in this case," but NYU Langone Health System is a separate corporate entity.

The movant submits an affirmation from Jeffrey Stupak, Director of Insurance and Multiline Claims, on behalf of NYU Langone Health System. Mr. Stupak affirms that NYU Langone Health System is a corporation which "employs administrative personnel who provide support services to the various NYU campuses," and that this entity "does not provide any healthcare services." He also affirms based on his personal knowledge and review of the employment database that NYU Langone Health System never employed Dr. Li or "any of the clinicians or caregivers who provided care and treatment" to Decedent.

In opposition, Plaintiff does not raise any issue of fact with respect to the corporate status of NYU Langone Health System or its vicarious liability for any other defendants in this action.

Accordingly, the part of the motion seeking summary judgment on behalf of NYU Langone Health System is **granted**, and Plaintiff's claims against them are dismissed.

Next, NYU Langone Hospitals argues on January 10, 2020, any residents, nurses, and other medical staff treating Decedent were carrying out the orders and directives of Dr. Li, the emergency department attending physician. They argue the other medical personnel did not exercise independent judgment or commit independent acts of negligence or malpractice.

In opposition, Plaintiff does not assert any claims as to Decedent's first emergency department visit on January 3-4, 2020. With respect to the January 10 claims, although Plaintiff's opposition generally refers to "Dr. Li and NYU Langone staff," they do not address any specific claims that any residents, physician's assistants, or nurses exercised independent medical judgment in their treatment of Decedent.

For this reason, summary judgment is **granted** to NYU Langone Hospitals with respect to all nurses, physician's assistants, or staff other than Dr. Li.

Finally, in evaluating the summary judgment motion as to Dr. Li, 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 the motion on behalf of Dr. Li, the movants submit an expert affirmation from Mark S. Silberman, M.D. (“Dr. Silberman”), a licensed physician board certified in internal medicine, emergency medicine, critical care, and pulmonary medicine.

Dr. Silberman opines that on January 3, 2020, one week before the events at issue, Decedent presented with “classic asthma symptoms” including cough, shortness of breath, and wheezing on his initial emergency room visit. Dr. Silberman opines that he was properly given standard asthma therapy including bronchodilators and steroids, his oxygen saturation improved to 96-99% on room air, and he was ambulating in the unit without dyspnea.

On January 10, Dr. Silberman opines that Decedent presented with cough, shortness of breath, and wheezing, but also had “new complaints” of abdominal pain, generalized weakness, fever, and diarrhea. Dr. Silberman opines that he was given appropriate tests including chest x-ray, EKG, and complete blood count. Dr. Silberman also opines that his venous blood gas results, while showing “minimally elevated pH,” did not indicate “acute respiratory compromise or metabolic instability.” He opines his elevated Co3 levels suggested “chronic respiratory issues, not acute issues,” and his “slight wheeze” was attributed to his “underlying lung disease” and not acute asthma exacerbation.

Dr. Silberman opines that Decedent was properly diagnosed with Influenza A and prescribed Tamiflu, “consistent with CDC guidelines for patients at increased risk for complications from influenza.” He opines based on the record that “his clinical picture was consistent with acute influenza,” and his symptoms and vital signs normalized after nebulizer treatments, as demonstrated by the note that he was “ambulatory in the ED without dyspnea” and a nursing note recorded that his respiratory rate was 17 (normal) and oxygen saturation was 100% on room air before discharge. The expert further opines that there was “no evidence of acute asthma,” and because Decedent was already taking prednisone from his prior admission, “there was no indication for an additional prescription for systemic steroids.”

Dr. Silberman opines that the standard of care “does not mandate hospitalization for all influenza or asthma patients if they are stable, improving, and meet criteria for discharge.” In Decedent’s case, he opines that he was appropriately determined to be stable for discharge due to “normal repeat vital signs and resolution of any asthma symptoms,” and he was discharged with proper instructions to return if he experienced worsening symptoms.

For these reasons, Dr. Silberman opines that attending physician Dr. Li did not depart from the standard of care in her assessment, diagnosis, and discharge of Decedent on January 10.

Dr. Silberman opines that Decedent’s cardiac arrest “was likely related to complications of influenza, which is recognized to increase the risk of acute coronary events, especially in patients with asthma.” However, he opines that such complications cannot be predicted, and the fact he would suffer a cardiac arrest “was not foreseeable” at the time of his discharge on January 10. Therefore, he opines that no alleged departure from the standard of care by Dr. Li was a proximate cause of his injuries or death.

Based on these submissions, the movant's expert has established prima facie entitlement to summary judgment in favor of Dr. Li. The expert sets forth well-reasoned opinions, based on the facts in the record, that Dr. Li's evaluation, treatment, and discharge of Decedent on January 10, 2020 was in accordance with the standard of care based on his clinical presentation, and that no further monitoring or hospitalization was required at that time.

The movant's expert also establishes that no alleged departures from the standard of care were a proximate cause of Decedent's subsequent injuries or death. He opines based on the record that he was clinically stable at the time of his discharge, and there was no medical indication of "respiratory distress or ongoing hypoxia." He opines that his subsequent cardiac arrest occurred the following afternoon as an unforeseeable complication of influenza infection, and not the result of any deviation from the standard of care by Dr. Li.

Accordingly, the movants have met their prima facie burden of establishing entitlement to summary judgment on behalf of Dr. Li on the medical malpractice and wrongful death claims. The burden shifts to Plaintiff to raise a triable issue of fact.

In opposition, Plaintiff submits an expert affirmation from Jeffrey C. Blank, D.O. ("Dr. Blank").

The movants argue in reply that Plaintiff's expert Dr. Blank has not properly laid a foundation to opine on the issues in this case. Dr. Blank states that he is an internal medicine physician, former research technician, and trained basic EMT. He states generally that he has "the scope of licensure and/or certification that typically manages the medical conditions, treatments, and issues in this matter" and has "experience providing medical care and treatment to patients similarly situation to Decedent." Dr. Blank's attached C.V. shows that he is a current intensivist and former internal medicine resident, and that he has contributed to publications on

growth hormones, diabetes, and narcotic drug research while he was in college. He is not board certified by the American Board of Medical Specialties or similar certifying organization in any field, and he has not stated any apparent qualifications or shown experience in emergency medicine or pulmonology, which are relevant to the medical issues herein.

“[W]here a physician opines outside his or her area of specialization, a foundation must be laid tending to support the reliability of the opinion rendered” (*Hannen v Nici*, 230 AD3d 1118, 1120 [2d Dept 2024], quoting *Abruzzi v Maller*, 221 AD3d 753, 756 [2d Dept 2023]). In his affirmation, Dr. Blank’s boilerplate and conclusory statement that he has treated “similarly situated” patients does not lay a proper foundation to opine on the standard of care for treating patients for influenza, asthma exacerbation, or signs of respiratory distress in a hospital emergency department setting, nor specify “what, if anything, he did to familiarize himself with the standard of care” (*Hannen* at 1120). Additionally, nothing in his C.V. supports his claim of expertise on the medical issues stated in this case, which involve whether Decedent was wrongfully discharged from the emergency department and whether the physician failed to properly interpret the venous blood gas results or order additional tests to rule out acute asthma exacerbation. In contrast to the movant’s expert who set forth his experience in emergency and pulmonary medicine, Plaintiff’s expert did not make any showing that he was qualified as to opine on whether Decedent’s venous blood gas results indicated chronic or acute issues, nor opine on whether Decedent’s cardiac arrest was proximately caused by his discharge on January 10.

Notwithstanding the lack of probative value based on the qualifications of Plaintiff’s expert, his opinions are also speculative, conclusory, and based in hindsight reasoning (*see Samer v Desai*, 179 AD3d 860, 863 [2d Dept 2020]; *Ortiz v Wyckoff Hgts. Med. Ctr.*, 149 AD3d 1093, 1095 [2d Dept 2017]).

The Court finds Plaintiff's expert has not established a foundation to reliably counter the movant's expert submissions from a certified specialist in pulmonary medicine and emergency medicine, as he did not set forth any qualifications in his affirmation or attached C.V. which are relevant to the issues in this case. Therefore, his affirmation lacks probative value necessary to raise genuine issues of fact, and even if his opinions are considered, they are conclusory, speculative, and based on hindsight. For these reasons, the motion for summary judgment on behalf of Dr. Li is **granted**. Plaintiff's claims against Dr. Li, and the vicarious liability claims against NYU Langone Hospitals on behalf of Dr. Li, are dismissed.

Accordingly, it is hereby:

**ORDERED** that the motion (Seq. No. 5) seeking summary judgment in favor of NYU Langone Health System s/h/a NYU Langone Health Systems, NYU Langone Hospitals, and Dr. Li is **granted**, and all claims and cross claims against them are dismissed.

The Clerk shall enter judgment in favor of NYU LANGONE HOSPITALS, NYU LANGONE HEALTH SYSTEMS, and CAREY LI, M.D.

This constitutes the decision and order of this Court.

ENTER.



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