At an IAS Term, Part MMESP-7 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 17th day of October 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

ADAM GOLDFARB, as Administrator of the Estate of SARAH GOLDFARB, a/k/a SARAH MARY GOLDFARB, deceased, and ADAM GOLDFARB and ERICA GOLDFARB, individually,

Plaintiffs,

-against-

NEW YORK CITY HEALTH & HOSPITALS CORPORATION, HAJIR DILMANIAN, M.D., NEW YORK-PRESBYTERIAN BROOKLYN METHODIST HOSPITAL, DEEPAK ASTI, M.D., NEW YORK HEART AND VASCULAR SPECIALISTS, P.C., WYCKOFF HEIGHTS MEDICAL CENTER, MARK A. SELDON, M.D. and CARDIOVASCULAR CONSULTING OF NEW YORK, P.C.,

Defendants.

----------X

DECISION & ORDER

Index No. 531901/2021
Mo. Seq. 2

HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.
Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: Seq. 1: 89 – 90, 91 – 127, 129, 130 – 148, 149 – 151, 152 – 154

Seq. 2: 159 – 160, 161 – 167, 168 – 195, 199, 200 – 201

Plaintiffs move (Seq. No. 2) for an Order, pursuant to CPLR 2221 (d) and (e), granting leave to reargue or renew this Court's prior Decision and Order dated May 22, 2025, and upon reargument and/or renewal, denying summary judgment to Defendants Hajir Dilmanian, M.D. ("Dr. Dilmanian") and New York-Presbyterian Brooklyn Methodist Hospital ("Methodist Hospital") and restoring Plaintiffs' claims against them. Defendants Dr. Dilmanian and Methodist Hospital oppose the motion.

By Decision and Order dated May 22, 2025, this Court granted Dr. Dilmanian and Methodist Hospital's motion for summary judgment and dismissed Plaintiffs' claims against them. The Court held that the moving defendants established prima facie that Dr. Dilmanian acted in accordance with the standard of care in his treatment of Decedent on August 26, 2019, and that no alleged deviations from the standard of care proximately caused her injuries or death. The Court found the opinions rendered by Plaintiffs' expert in opposition failed to raise a triable issue of fact. The Court also held that Plaintiffs' submissions failed to raise a genuine issue of fact as to Methodist Hospital and their alleged failure to properly follow up with Decedent and schedule the stress echocardiogram and transthoracic echocardiogram. The Court declined to consider phone records offered by Plaintiffs for the first time in opposition, which had not been provided to Defendants during discovery.

Now, Plaintiffs move to reargue the prior motion on the basis of allegedly overlooked or misapprehended facts and law, and/or to renew the motion with respect to Decedent's phone records.

CPLR 2221 (d) provides that when a party moves to reargue a prior motion, the reargument shall be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." "Motions for reargument are addressed to the sound discretion of the court which decided the original motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision" (*Fuessel v Chin,* 179 AD3d 899, 900-901 [2d Dept 2020], quoting *Bueno v Allam,* 170 AD3d 939, 940 [2d Dept 2019]).

Plaintiffs seek to reargue this Court's prior Decision and Order on multiple grounds. First, they argue this Court overlooked or misapprehended the facts and law with respect to the prima

facie burden of Defendants' expert, Henry S. Cabin, M.D. ("Dr. Cabin"). They argue that his opinions were conclusory and controverted by the record with respect to Dr. Dilmanian's review of the Woodhull records involving Decedent's prior visit to the emergency room. They also argue that the Court overlooked or misapprehended the issues of fact raised by Plaintiff's expert [name redacted] as to Dr. Dilmanian's claimed failure to obtain and review the Woodhull records, the timing of the ordered tests, and the need for a cardiac MRI.

Plaintiffs further argue that the Court improperly determined there were no issues of fact as to proximate causation, because Defendants did not meet their prima facie burden on this issue and Plaintiff's expert raised triable issues of fact.

On their claims that Methodist Hospital failed to properly follow up and schedule diagnostic tests, Plaintiffs argue that Defendants' expert Dr. Cabin was conclusory and improperly relied on "custom and practice" testimony from the hospital scheduler, Tasha Briggs. They also argue that the Court should not have disregarded Decedent's phone records submitted in opposition, and they should consider these records in the instant motion.

In opposition, Defendants argue that Plaintiffs are simply attempting to relitigate issues which the Court addressed in the May 22, 2025 decision. However, the Court finds that Plaintiffs have raised multiple points on which the Court overlooked relevant facts in rendering the original determination. The Court's prior decision did not fully consider the experts' opinions with respect to Plaintiff's claim that Dr. Dilmanian failed to review the complete Woodhull medical records, failed to order an expedited stress test, and failed to order a cardiac MRI, as well as the parties' arguments as to proximate causation. Additionally, the prior decision did not fully consider the sufficiency of the Tasha Briggs affidavit and the question of Ms. Brigg's "custom and practice" assertions. These issues require further discussion and reconsideration.

Based on evaluation of the instant motion and the original support and opposition papers, leave to reargue Defendants' summary judgment motion is **granted**, and upon reconsideration, the Court **vacates** its prior decision and issues this decision in its place.

The underlying claims in this medical malpractice and wrongful death action involve the treatment and care of Decedent, a 27-year-old woman, and the alleged failure to timely diagnose and treat her heart condition by various providers between August-December 2019.

Decedent underwent an EKG and echocardiogram at Woodhull Hospital (non-moving co-defendant NYCHHC) on August 2-3, 2019, following symptoms of chest pain and shortness of breath.

On August 26, 2019, Decedent presented to cardiologist Dr. Dilmanian at Methodist Hospital for a cardiology evaluation. He performed a physical examination and EKG, which indicated T wave abnormalities, bradycardia, and premature atrial complexes. An order was placed by Dr. Dilmanian for a follow-up echocardiogram and a stress echocardiogram, but Plaintiff claims these tests were never scheduled, and she had no further treatment at Methodist Hospital.

Decedent later had a syncopal (fainting) episode on October 28, 2019 and saw additional providers, who did not move for summary judgment. On December 11, 2019, she fainted while using a treadmill and suffered a cardiac arrest. She passed away on December 18, 2019. An autopsy report found her cause of death was sequelae of cardiac arrest, due to cardiac arrhythmia and underlying cardiomyopathy, most likely arrhythmogenic right ventricular cardiomyopathy (ARVC), a genetic heart disease.

On a motion for summary judgment in a medical malpractice case, the initial burden is on the moving defendants to "make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the patient's injuries.

To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars. Once a defendant has made such a showing, the plaintiff, in opposition, must submit evidentiary facts or materials to rebut the defendant's showing, but only as to those elements on which the defendant met the prima facie burden" (*Wagner v. Parker*, 172 AD3d 954, 966 [2d Dept. 2019]).

One of Plaintiffs' primary claims against Dr. Dilmanian was that he failed to obtain and review Decedent's complete Woodhull Hospital records. On the day of her August 26, 2019 visit to Dr. Dilmanian, Decedent was asymptomatic and did not report chest pains or shortness of breath. Decedent brought her EKG and echocardiogram results from Woodhull with her, and Dr. Dilmanian reviewed them, but he did not request or review the complete records.

Defendants' expert Dr. Cabin opined that it was within the standard of care "to rely on the Woodhull records . . . which Ms. Goldfarb brought to Dr. Dilmanian and which are part of the Methodist chart." However, the expert did not address Plaintiffs' claim that Dr. Dilmanian failed to obtain her complete records from the Woodhull admission, which would have shown her history and complaints of dyspnea/shortness of breath on exertion.

Plaintiffs' expert opined that "the standard of care required Dr. Dilmanian and/or his office staff request copies of the patient's record to identify what specific complaints the patient made." The expert further opined that if he had obtained those records, Dr. Dilmanian would have seen her previous complaints of dyspnea/shortness of breath on exertion, and the standard of care would require an expedited stress echocardiogram, due to her risk of experiencing a fatal arrythmia.

Plaintiffs also alleged that Dr. Dilmanian should have ordered a cardiac MRI. Their expert noted that the cardiac MRI is "the most useful definitive test" for revealing "detailed information about structural heart abnormalities," and that it is "more sensitive to diagnose all forms of

cardiomyopathy," including Decedent's arrythmia condition. Although the expert's opinions were partly based on her history of symptoms, the expert also opined that a cardiac MRI was indicated by her markedly abnormal EKG and echocardiogram from Woodhull Hospital on August 2 and her abnormal EKG at Dr Dilmanian's office on August 26. The expert opined that a cardiac MRI was "the logical and necessary next step in a 27-year-old female" with no previous cardiac problems and an August 2 echocardiogram showing abnormal right ventricle, right atrial, and elevated central venous filling pressure, as opposed to other tests which would primarily diagnose coronary artery disease.

Plaintiffs' expert based this opinion not only on her prior symptoms, but on the existing echocardiogram that Dr. Dilmanian reviewed and Dr. Dilmanian's testimony that the repeat echocardiogram he ordered on August 26 was expected to be abnormal (*see* Dr. Dilmanian tr at 162-163 [Q: "Did you have an opinion on August 26th as to whether you expected those test results to be abnormal?" A: "I was concerned that she- I was concerned these tests would come out abnormal, yes."]). The expert opined that in these circumstances, the standard of care was to order a cardiac MRI at the same time as the other diagnostic tests.

Upon reargument and reevaluation of the expert submissions, the Court finds that Plaintiff raised a triable issue of fact as to whether Dr. Dilmanian departed from the standard of care in not obtaining and reviewing the complete set of medical records from Woodhull and not ordering a stress echocardiogram on an expedited basis. Further, based on the evidence submitted in the original motion, the Court now finds that Plaintiffs' expert raised a triable issue of fact as to whether Dr. Dilmanian should have ordered a cardiac MRI.

On the issue of proximate causation, a plaintiff in a medical malpractice action must ultimately "present sufficient medical evidence from which a reasonable person might conclude

that it was more probable than not that the defendant's departure was a substantial factor in causing the plaintiff's injury" (*Starre v Dean*, 229 AD3d 728 [2d Dept 2024]). "As to causation, the plaintiff's evidence may be deemed legally sufficient even if its expert cannot quantify the extent to which the defendant's act or omission decreased the plaintiff's chance of a better outcome or increased his injury, as long as evidence is presented from which the jury may infer that the defendant's conduct diminished the plaintiff's chance of a better outcome or increased his injury" (*i.d.,* quoting *Neyman v Doshi Diagnostic Imaging Services, P.C.,* 153 AD3d 538, 545 [2d Dept 2017]).

In the original motion, Defendants argued that no alleged departures from the standard of care by Dr. Dilmanian proximately caused Decedent's injuries or death. Defendants' expert based this opinion on the fact that Decedent did not suffer her first syncopal episode until October 28, 2019, two months after her visit to Dr. Dilmanian, and she never returned to his office for any follow-up examination or diagnostic tests after her clinical picture changed. Following her onset of syncopal episodes, she sought treatment from Wyckoff Heights and a different cardiologist. She ultimately passed away in December 2019, over three months after Dr. Dilmanian's evaluation. Defendants argued Plaintiff could not demonstrate a causal link between Dr. Dilmanian's treatment of her as a "non-emergent patient" on the date she presented to his office, and her injuries and death months later.

In opposition to the original motion, Plaintiff's expert set forth their opinion that Dr. Dilmanian's failure to review Decedent's medical records, failure to order, schedule, and perform a stress echocardiogram on an "expedited"/urgent basis, and failure to order, schedule, and perform a cardiac MRI deprived Decedent of "treatment opportunities, which would have prevented her from experiencing syncopal episodes and prevented her untimely death." The expert opined that

these tests would likely have revealed structural abnormalities and led to an earlier diagnosis of arrhythmogenic right ventricular cardiomyopathy (ARVC).

The expert further opined that if her condition was diagnosed by cardiac MRI as early as August 2019, she could have received "immediate treatment, including ordering an implantable cardiac defibrillator." The expert states that with early diagnosis and treatment, ARVC is a "treatable condition" for which she could have received beta blockers, an implantable cardiac defibrillator, or a pacemaker. The expert opined that all this would have given her the opportunity for a better outcome and prevented her syncopal episodes, cardiac arrest, and death.

Upon reargument, the Court finds the opinions from Plaintiff's expert are sufficiently detailed, well-reasoned, and based on the evidence submitted to raise a genuine issue of fact as to whether Dr. Dilmanian's acts and omissions diminished Decedent's chance of a better outcome and proximately caused her death.

Additionally, although it was not expressly stated in the original Decision, the Court rejected then and rejects herein Defendant's arguments that Decedent's later onset symptoms and her treatment by the other defendants were a "superseding cause" of her injuries and death. Generally, an intervening act must be "extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct" to be considered a superseding act that breaks the chain of causation (*id.* at 706). The fact Decedent later began to experience syncopal episodes, a symptom of her underlying cardiomyopathy, cannot be considered extraordinary under the circumstances as a matter of law. Plaintiff claims this symptom arose in the months following her visit to Dr. Dilmanian *because* her condition was not timely diagnosed with appropriate follow-up testing, and thus the change in her clinical picture was not "independent or far removed" from his conduct.

Similarly, the defendant has not demonstrated that Decedent's visits to other providers were extraordinary or unforeseeable. The fact Decedent received subsequent treatment from other defendant physicians and facilities does not, in and of itself, "absolve [moving] defendant from liability, because there may be more than one proximate cause of an injury" (*Mazella v Beals,* 27 NY3d 694, 706 [2016] [internal quotation marks and citation omitted]). Whether Decedent chose not to return to Dr. Dilmanian is an issue of fact which may relate to the defense of culpable conduct, not proximate causation.

In conclusion, the Court finds, upon reargument, that there are triable issues of fact as to whether Dr. Dilmanian's acts and omissions proximately caused Decedent's injuries and death, which must be resolved by a jury.

Turning to the claims against Methodist Hospital, Plaintiffs argue that the Defendants' expert improperly relied on "custom and practice" evidence in the affidavit from Tasha Briggs, when the expert stated that the staff "appropriately followed up with Ms. Goldfarb and tried multiple times to schedule her for the testing." Plaintiffs dispute that there was any such follow-up and contend that Decedent was never called by the hospital to schedule the stress echocardiogram that Dr. Dilmanian ordered.

Defendants argue that this "custom and practice" argument is presented for the first time in this motion to reargue. This Court disagrees. Although Plaintiffs address the affidavit's legal sufficiency in greater detail and with citations to case law, they also addressed the issue in their original opposition papers, stating "Dr. Cabin improperly relies on Ms. Briggs' custom and practice to conclude that appropriate and reasonable efforts were made to set up Ms. Goldfarb's cardiac tests," and "[Dr. Cabin] instead relied on Ms. Briggs' custom and practice to assume that Ms. Briggs did what she claims she would usually do."

"A party can rely on custom and practice evidence to fill in evidentiary gaps where the proof demonstrates a deliberate and repetitive practice by a person in complete control of the circumstances. Such evidence is generally admissible to prove that a person acted in conformity therewith on a specific occasion because one who has demonstrated a consistent response under given circumstances is more likely to repeat that response when the circumstances arise again." (*Rivera v Stand Up MRI of Elmhurst, P.C.*, 235 AD3d 918 [2d Dept 2025].) "Custom and practice evidence draws its probative value from the *repetition and unvarying uniformity* of the procedure involved as it depends on the inference that a person who regularly follows a strict routine in relation to a particular repetitive practice is likely to have followed that same strict routine at a specific date or time relevant to the litigation" (*i.d.* [emphasis added]). "However, evidence of 'conduct however frequent yet likely to vary from time to time depending upon the surrounding circumstances' is not admissible as custom and practice evidence" (*Martin v Timmins*, 178 AD3d 107 [2d Dept 2019], quoting *Rivera v Anilesh*, 8 NY3d 627, 634 [2007]).

Tasha Briggs averred in her affidavit that "according to the general custom and practice at the Department of Cardiology at Methodist in 2019, as well as my custom and practice as ASR [Access Service Representative] for each and every patient in 2019, I would have called Ms. Goldfarb within two business days to schedule her for the outpatient testing." She went on to state that in the event the patient did not pick up, she would have left a detailed voicemail and "made a note for myself on a piece of paper as a reminder to call her back again." If the patient did not pick up the second time, she stated that she "would have again left her a voicemail." In Briggs' words, if the patient did not return the second call *or* "communicated to me that she did not wish to schedule the ordered cardiology testing or procedures," she would not contact them again.

This affidavit does not demonstrate an unwavering repetition and uniformity sufficient to

establish that Briggs placed two calls and voicemails to Decedent in the days following her appointment with Dr. Dilmanian. Unlike other cases involving clerical practices, Briggs did not aver to a routine that was "repetitive and performed the same way every time" *(c.f. Preferred Mut. Ins. Co. v Donnelly*, 22 NY3d 1169, 1170 [2014]). By Briggs' own admissions, the number of calls and how the patient responded varied from patient to patient, and she kept notes (which are no longer available) on which patients she needed to call a second time. Based on these general protocols, she avers that she would stop contacting the patient *either* after leaving two voicemails or receiving an affirmative response that they did not wish to return. As she has no notes or independent recollection of what occurred in this case, and her clerical "custom and practice" was inherently variable and not repetitive, this affidavit is insufficient to eliminate issues of fact as to whether Methodist Hospital appropriately followed up with Decedent.

With no other evidence substantiating Briggs' actions after receiving the email to schedule the appointment, the expert Dr. Cabin's statements that Methodist Hospital made multiple efforts to contact Decedent and she chose not to return are conclusory, speculative, and unsupported by the record. For this reason, the Court finds upon reargument that Defendants did not meet their prima facie burden on this issue, and summary judgment must be denied.

With respect to the part of the motion seeking leave to renew, CPLR 2221 (e) allows a party to renew a prior motion based upon a change in the law, or "based upon new facts not offered on the prior motion that would change the prior determination." The motion must also "contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221 [e] [3]). Renewal is improper where the moving party merely restates arguments and facts which were previously available, without offering "any new facts or a valid explanation" for not making that factual showing at the time of the original motion (*Jacobs v Sabo*, 17 AD3d 321 [2d

Dept 2005]; *see also Ciceron v Gulmatico,* 220 AD3d 736, 739 [2d Dept 2023]; *Tollinchi v Jamaica Hosp. Med. Ctr.*, 216 AD3d 842, 845 [2d Dept 2023]).

Plaintiffs' motion to renew is based on Decedent's T-mobile phone records showing incoming and outgoing calls from August 2019 through December 2019. Although the records were previously submitted in opposition to the original motion, Plaintiffs offer more evidence as to the discovery demands and exchanges of both sides, and they offer justifications for filing their Note of Issue before the authorizations were provided.

The Court finds that even if the phone records are accepted and considered, these records have little probative value as to whether a call was made to Decedent from Methodist Hospital. Plaintiffs allege that any calls from Methodist Hospital should have come from one of the seven numbers in a "basic online search" for numbers associated with the Methodist Hospital cardiology department, or a similar number with a 718 area code. They state that none of these telephone numbers "associated with Methodist" appear in Decedent's incoming phone calls from August through December 2019. However, Plaintiff's claim that these are the only listed or unlisted phone numbers which would have been used by Methodist Hospital staff in 2019 is speculative and unsupported by evidence at this juncture. Standing alone, the phone records do not demonstrate that no calls were made from any number associated with Methodist Hospital.

Regardless, because the Court finds that the custom and practice testimony of Tasha Briggs was insufficient to eliminate issues of fact as to the attempted appointment-scheduling contacts, there are issues of fact as to Methodist Hospital's alleged failure to properly follow up with Decedent which preclude summary judgment as a matter of law.

For these reasons, the Court **vacates** its prior decision and order dated May 22, 2025 granting summary judgment to Dr. Dilmanian and Methodist Hospital. Upon reargument,

summary judgment is **denied** as to the medical malpractice and wrongful death claims.

Finally, Plaintiffs did not address the claims of lack of informed consent in their motion to renew or reargue, and they did not oppose dismissal of these claims in the original motion. Accordingly, the Court grants summary judgment to Dr. Dilmanian and Methodist Hospital on the informed consent claims, only.

It is hereby:

ORDERED that Plaintiff's motion (Seq. No. 2) for an Order, pursuant to CPLR 2221 (d) or (e), to renew or reargue the prior motion (Seq. No. 1), is **granted to the extent** that the Court grants leave to reargue the prior motion; and it is further

ORDERED that upon reargument, the prior decision and order dated May 22, 2025 is **vacated and superseded** by this decision and order; and it is further

ORDERED that any Judgment entered upon the May 22, 2025 decision and order shall be **vacated**; and it is further

ORDERED that upon reargument, Defendants' motion (Seq. No. 1) seeking summary judgment in favor of Dr. Dilmanian and Methodist Hospital is **granted to the extent** of dismissing the claims of lack of informed consent against them, and their motion for summary judgment is otherwise **denied.**

This constitutes the decision and order of this Court.

ENTER.

Hon. Consuelo Mallafre Melendez
J.S.C.