| **Cox v Mehta** |
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| 2025 NY Slip Op 34068(U) |
| October 15, 2025 |
| Supreme Court, Kings County |
| Docket Number: Index No. 513344/19 |
| Judge: Carolyn E. Wade |
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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 15th day of October, 2025.

**PRESENT:**
**HON. CAROLYN E. WADE,**
Justice

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DAVE COX, as Administrator of the Goods, Credits and Chattels which were of WINIFRED WILSON-DOTTIN, Deceased, and DAVE COX, Individually,

Plaintiffs,

Index No. 513344/19

-against-

**DECISION AND ORDER**

Mot. Seq. No. 3 and 2

VIPLOV K. MEHTA, M.D.,
PETER W. MOLLICA, D.P.M.,
JOHN FERGUSON, M.D., and
KINGSBROOK JEWISH MEDICAL CENTER,

Defendants.

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**Recitation, as required by CPLR 2219 (a), of the electronic papers considered in the review of the respective summary judgment motions of defendants John Ferguson, M.D., and Kingsbrook Jewish Medical Center:**

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| Notice of Motion, Affirmations, and Exhibits Annexed | 55-72; 73-92 |
| Opposing Affirmations and Exhibits Annexed | 93-97; 98; 99 |
| Reply Affirmations | 100-101; 102 |
| Proposed Orders | 103; 104; 105; 106 |

Upon the foregoing papers, and after oral argument, the respective Summary Judgment motions of Defendants, John Ferguson, M.D. ("Dr. Ferguson") and Kingsbrook Jewish Medical Center ("KJMC"), in each instance, for an Order, pursuant to CPLR §3212, granting Summary Judgment dismissing all claims as against such Defendant (Seq. Nos. 3 and 2, respectively),[1] are decided as follows:

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OCT 17 2025
KINGS COUNTY CLERK'S OFFICE

[1] For ease of analysis, the Court addresses Dr. Ferguson's motion first, although it was filed after (and was designated as a later sequence number than) KJMC's motion.

## BACKGROUND

On or about Tuesday, December 11, 2018, Plaintiff's decedent, Winifred Wilson-Dottin (hereinafter "Patient"), age 74, submitted to an elective, same-day admittance and discharge, bunionectomy on her left big toe to be performed at KJMC by non-moving Defendant, Peter W. Mollica, D.P.M. ("Dr. Mollica"). The bunionectomy was to be performed under monitored anesthesia care (a combination of intravenous anesthetic agents and sedatives of Propofol, Fentanyl, and Versed, with oxygen by way of nasal cannula at 4 liters per minute) ("MAC") to be provided and monitored by anesthesiologist Dr. Ferguson. The patient pre-signed a joint consent form for both surgery and anesthesia, at 7:27 a.m. Dr. Ferguson and Dr. Molica separately signed the joint consent form at 8:20 a.m. and at 8:45 a.m., respectively.

At Dr. Mollica's request (and before Dr. Ferguson's arrival at KJMC), non-moving Defendant, Viplov K. Mehta, M.D. ("Dr. Mehta"), provided a pre-operative *medical* clearance for surgery and, at his direction, Patient received a single-dose of Metoprolol Tartrate 25 mg for her presenting hypertension of 159/103. Upon his subsequent arrival at KJMC, Dr. Ferguson noted, in connection with his own pre-operative *anesthetic* clearance, that: (1) Patient suffered from left-sided hemiparesis of the cardiovascular-accident ("CVA") origin for several decades and (2) she was not taking antihypertensives (although she was prescribed same by her primary medical doctor) because she attributed the underlying cause of her hypertension to "white-coat syndrome" (meaning that she believed that she became hypertensive only when she was visiting a medical office). After taking into account Patient's age (74 years old), her CVA-originated hemiparesis of long-standing duration, and her obesity (the patient's BMI was 30.25, based on her height of 5 feet, 8

inches, and her weight of 199 pounds), Dr. Ferguson assigned her a rating of 3 (meaning a severe systemic disease) on the American Society of Anesthesiologists ("ASA") physical status classification scale and cleared her for surgery from an anesthesiology perspective.[2]

At 8:57 a.m., the Patient, lying on a gurney, was wheeled into the operating room. At 9:05 a.m., Dr. Ferguson administered a pre-operative antibiotic (Ancef). Almost concurrently, Dr. Ferguson started the administration of the MAC agents. At 9:16 a.m., Dr. Mollica's surgical team applied a tourniquet to Patient's right ankle/foot to prevent bleeding from the surgical site. One minute later at 9:17 a.m., Dr. Mollica began surgery by making the first incision. From the record, it is unclear whether the patient was bleeding uncontrollably from the surgical site. The *final* operative report (as dictated by resident Sandreka Jones, M.D., and as finalized by Dr. Mollica) merely noted that the "surgical site began to bleed despite the tourniquet remaining inflated to 250 mmHg."[3] The *draft* operative report of resident Dr. Jones (before Dr. Mollica finalized it) had stated (not once, but twice) that "bleeding [from the surgical site] could not be controlled."[4]

Between 9:30 a.m. and 9:35 a.m. (within the first 20 minutes from the start of surgery at 9:17 am), Patient suffered two separate episodes of bradycardia/hypotension.[5] In response to Patient's first episode of bradycardia (her heart rate of 23 beats per minute), Dr. Ferguson injected Patient with glycopyrrolate (an anticholinergic agent with indirect

[2] The ASA is scale runs from 1 (a healthy patient) to 6 (a brain-dead patient).

[3] KJMC's records, page 632 (Operative Report, page 1 of 2).

[4] KJMC's draft Operative Report, dated January 8, 2019, page 1 of 2 (NYSCEF Doc No. 95). Contrary to KJMC's counsel's contention (in ¶ 31 of its Reply Affirmation at NYSCEF Doc No. 102), this discrepancy (viewed in the totality of circumstances) is material and carries legal/factual consequences, as it bears on the overall accuracy of the *entirety* of KJMC's medical records, including the timing (and description) of the post-cardiac arrest resuscitation.

[5] KJMC's records, page 327 (Dr. Ferguson's progress note, dated December 11, 2018 timed at 10:30 a.m.). Dr. Ferguson's EBT transcript, page 123, lines 7-8 (attributing the patient's loss of her pulse to her arrhythmia).

vasoconstrictive properties) to raise her pulse. Shortly thereafter, the second episode of bradycardia (Patient's heart rate rose to approximately 30 beats per minute) progressed (notwithstanding Dr. Ferguson's intervention) to the pulseless electric activity with unmeasurable blood pressure – a cardiac arrest. At 9:30 a.m., surgery was aborted.[6] At 9:35 a.m., cardiac code (known as "99") was called by Dr. Ferguson.[7] At 9:40 a.m., Patient was administered CPR in the form of an Ambu Bag and chest compressions. At 9:45 a.m., CPR ceased and Patient experienced a return of spontaneous circulation.[8] In the interim, at 9:42 a.m., Patient was intubated and connected to a ventilator with the oxygen flow at 6 liters per minute.[9] Between 9:37 a.m. and 9:45 a.m., multiple additional medications were injected by Dr. Ferguson into Patient's seriatim (ephedra 1x, ephedrine 2x, and atropine 1x). Ultimately, Patient was placed on a norepinephrine (Levophed) drip at 9:50 a.m.[10]

Shortly after 10 a.m., Patient was admitted to the critical care unit ("CCU") in "critical condition."[11] On admission to the CCU, Patient was "sluggish" and "non-responsive," with the pinpoint, 2-mm wide pupils.[12] At 11:30 a.m., Patient's blood pressure was significantly elevated at 184/123 (a hypertensive crisis), with the pulse rate of 108 (tachycardia).[13] At 12 noon, code "ICE" (which stands for therapeutic hypothermia after a cardiac arrest) was called.[14] At 12:00 p.m., Patient was manually cooled with ice, which

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[6] KJMC's records, page 837 (Case Confirmation/Audit Trail).

[7] KJMC's records, page 564 (Anesthesia Record).

[8] KJMC's records, page 327 (Dr. Ferguson's progress note, dated December 11, 2018 timed at 10:30 a.m.). According to Dr. Ferguson's pretrial testimony, CPR commenced at 9:40 a.m., rather than at 9:35 a.m., as indicated in the Cardiopulmonary Resuscitation (Kingsbrook's records, page 685).

[9] Dr. Ferguson denied participating in the CPR or in intubating the patient.

[10] KJMC's records, page 564 (Anesthesia Record).

[11] KJMC's records, page 244 (Department of Medicine – History & Physical Database, page 11 of 15).

[12] KJMC's records, page 16 (Final Discharge Summary, page 1 of 8).

[13] KJMC's records, page 108 (Nursing Progress Notes, dated December 11, 2018, timed at 11:30 a.m.).

[14] KJMC's records, page 108 (Nursing Progress Notes, dated December 11, 2018, timed at 12:00p.m.).

was enveloped in a blanket.[15] Manual cooling continued until 2:20 p.m. at which point a therapeutic hypothermia machine became available.[16] At 9:50 p.m., Patient achieved therapeutic hypothermia at 34.5° Celsius (94.1° Fahrenheit).[17]

On December 18, 2018, one week later, a brain CT scan showed that Patient had sustained a global anoxic injury. According to Dr. Ferguson, "post-cardiac [arrest] resuscitation for a brain injury is the most common complication of being resuscitated. If the brain goes more than . . . *four minutes* or so [without oxygen,] the patient is susceptible of suffering neuronal cell death[,] and the brain cells will start to die over that amount of time."[18] As noted, the interval between the cardiac code call at 9:35 a.m. and the start of the CPR at 9:40 a.m. was *five minutes*. Here, Patient's final diagnoses and co-morbidities (as summarized in her discharge summary from KJMC) read as follows:

> "Status post-cardiac arrest, code 99, with anoxic encephalopathy, elevated troponin, hypertension, electrolyte abnormalities, history of CVA with [the] left[-sided] hemiparesis, ruled out sepsis, thrombocytosis, [and] seizure[s;] small bowel obstruction ruled out[;] bunion left foot."[19]

On January 4, 2019, Patient was discharged from KJMC to a non-party nursing home, still on the ventilator after earlier attempts at weaning her off had failed. Following a stay of approximately 1 month, at the nursing home, Patient was then transferred to non-party Brookdale Medical Center ("Brookdale") where she ultimately died on March 1, 2019, at the age of 74. On February 16, 2019, and February 18, 2019, during Patient's

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[15] KJMC's records, pages 108-109 (Nursing Progress Notes, dated December 11, 2018, timed at 12 noon and at 2:20 p.m.).

[16] KJMC's records, page 109 (Nursing Progress Notes, dated December 11, 2018, timed at 2:20 p.m.).

[17] KJMC's records, page 571 (Nursing Flowsheet – Therapeutic Hypothermia After Cardiac Arrest, page 7 of 16).

[18] Dr. Ferguson's EBT transcript, page 114, lines 6-12 (emphasis added).

[19] KJMC's records, page 18 (Final Discharge Summary, page 3 of 8) (abbreviations spelled out; typographical errors corrected).

terminal hospitalization at Brookdale, her treating physicians performed and interpreted a Doppler-enhanced echocardiogram which ultimately revealed a "mobile interatrial septum" (Brookdale's records, page 912). On February 20, 2019, Patient's treating physicians performed and interpreted a follow-up "agitated saline"-enhanced echocardiogram, which narrowed their cardiac findings to "a patent foramen ovale or atrial septum defect" in her left atrium (Brookdale's records, page 923).

## STANDARD OF REVIEW

"A defendant moving for Summary Judgment in a medical malpractice action must demonstrate the absence of any material issues of fact with respect to at least one of the elements of a cause of action alleging medical malpractice: (1) whether the physician deviated or departed from accepted community standards of practice, or (2) [whether] such a departure was a proximate cause of the plaintiff's injuries" (*Rosenthal v Alexander*, 180 AD3d 826, 827 [2d Dept 2020] [internal citation omitted]). The failure to make such prima facie showing requires a denial of defendant's motion, regardless of the sufficiency of plaintiff's opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). In the Summary Judgment context, the well-established maxim is that [defendant's] evidence must be viewed in the light most favorable to the nonmoving [plaintiff]," subject to the overarching "general principle that summary judgment is

considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues of fact" (*Stukas v Streiter*, 83 AD3d 18, 30 [2d Dept 2011]).

**DISCUSSION**

Here, neither Dr. Ferguson, nor KJMC (with the exception of the abandoned claims as against KJMC, as more fully set forth in the decretal paragraph below) was able to establish, prima facie, that any of Plaintiffs' claims (whether sounding in medical malpractice, lack of informed consent, or wrongful death) should be dismissed. The record before the Court (at this stage of litigation) is replete with multiple issues of fact as to:

(1) whether Dr. Mehta (and vicariously KJMC) departed from the standard of care and proximately caused/contributed to the patient's injuries by "aggressive[ly] attempt[ing] to lower the patient's BP (especially in light of her risk profile)," which, in turn, "result[ed] in diastolic hypotension that compromise[d] [her] mean arterial pressure and thus impair[ed] [her] vital organ perfusion;"[20]

(2) whether Dr. Ferguson (and vicariously KJMC) "should have reconsidered the appropriateness of proceeding with monitored anesthesia care. . . with. . . propofol which is known to cause bradycardia and hypotension in high-risk elderly patients," such as the ASA level 3 Patient in this case;[21]

(3) whether Dr. Ferguson (and vicariously KJMC) "should have developed a clear plan for managing [the Patient's] potential hemodynamic instability," and "should have administered [ephedra, ephedrine, and/or atropine to Patient] promptly at the first [episode]

[20] Plaintiffs' Expert Anesthesiologist's Affirmation, dated July 14, 2025, ¶¶ 8-10 (NYSCEF Doc No. 96) ("Plaintiffs' Expert Affirmation").

[21] Plaintiffs' Expert Affirmation, ¶ 11.

of [her] bradycardia, rather than waiting [for the second episode of her bradycardia and] until cardiac arrest occurred;"[22]

(4) whether the "five-minute delay between the onset of pulseless electrical activity (PEA) [at approximately 9:35 a.m.] and the initiation of advanced resuscitative efforts, including chest compressions [at 9:40 a.m.] and epinephrine administration [initially at 9:40 a.m. and subsequently at 9:42 a.m.], represent[ed] [on the part of Dr. Ferguson and other members of the KJMC medical staff] a significant deviation from ACLS protocol and more likely than not exacerbated the degree of [Patient's] global anoxic brain injury;"[23]

(5) whether (as Plaintiffs' expert points out) the position of Dr. Ferguson's expert that Dr. Ferguson "continuous[ly] and appropriate[ly] monitor[ed] [Patient] throughout the procedure," and that his anesthetic "management [of Patient] was timely, prudent, and fully consistent with accepted anesthesiology practice,"[24] is factually unsupported because (according to Plaintiffs' expert) "several core elements of anesthetic care, including airway management, are undocumented," and that "a close review of the anesthesia and nursing records reveals inconsistencies in time stamps and a questionable sequence of events;"[25]

(6) whether – while on Dr. Ferguson's watch –Patient "began to develop bradycardia and hypotension intraoperatively, but the administration of life-saving agents such as atropine and epinephrine [by Dr. Ferguson] was delayed until after [her] cardiac arrest occurred;"[26]

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[22] Plaintiffs' Expert Affirmation, ¶ 11.
[23] Plaintiffs' Expert Affirmation, ¶ 12.
[24] Expert Affirmation of Judith Schachner, M.D., dated May 19, 2025, ¶ 40 (NYSCEF Doc No. 75).
[25] Plaintiffs' Expert Affirmation, ¶ 13.
[26] Plaintiffs' Expert Affirmation, ¶ 14.

(7) whether Patient sustained "uncontrolled" bleeding, as was twice mentioned in the *draft* operative report, whereas the qualifier "uncontrolled" was repeatedly omitted from the *final* version of the operative report;[27]

(8) whether the KJMC staff timely and properly initiated and ran the ICE protocol for therapeutic hypothermia after a cardiac arrest, considering (as noted above) that a therapeutic hypothermia machine was unavailable to Patient for 2 hours and 20 minutes after code ICE was called;[28]

(9) whether Patient was able to (and did) experience conscious pain and suffering following her intraoperative cardiac arrest;[29]

(10) whether the two intraoperative episodes of Patient's bradycardia and hypotension (of which both happened within the first 20 minutes of surgery) were due to (and proximately caused by) the subsequently discovered "patent foramen ovale or atrial septum defect" in the patient's left atrium; and

(11) whether the subsequently discovered "patent foramen ovale or atrial septum defect" in Patient's left atrium had any causative effect (either positive, negative, or neutral) on the effectiveness of the KJMC staff's post-cardiac arrest resuscitative efforts.

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[27] Plaintiffs' Expert Affirmation, ¶ 16.

[28] According to plaintiffs' expert (in ¶ 19 of his/her Expert Affirmation), "under established American Heart Association and critical care guidelines, [code ICE] should begin as early as possible after ROSC [return of spontaneous circulation,]" which, as reflected in Dr. Ferguson's progress note at page 327 of KJMC's records, happened at 9:45 a.m. in this case.

[29] Plaintiffs' Expert Affirmation, ¶¶ 20-21.

The Court considered the parties' remaining contentions and found them either moot or unavailing in light of its determination. All relief not expressly granted herein is **DENIED**.

## CONCLUSION

Based on the foregoing and after oral argument, it is hereby

**ORDERED** that in Seq. No. 3, Dr. Ferguson's motion is **DENIED**; and it is further

**ORDERED** that in Seq. No. 2, KJMC's motion is **GRANTED SOLELY TO THE EXTENT** that Plaintiffs' claims of negligent hiring and res ipsa loquitor are dismissed as abandoned. The remainder of the Motion is **DENIED**; and it is further

**ORDERED** that plaintiffs' 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 said service with the Kings County Clerk.

This constitutes the Decision and Order of the Court.

**E N T E R:**

**HON. CAROLYN E. WADE, J.S.C.**
**SUPREME COURT JUSTICE**

FILED
OCT 17 2025
KINGS COUNTY CLERK