

Shaikh v Ciatto

2025 NY Slip Op 34187(U)

March 4, 2025

Supreme Court, Queens County

Docket Number: Index No. 704330/2020

Judge: Tracy Catapano-Fox

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This opinion is uncorrected and not selected for official publication.

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

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MOHAMMAD SHAIKH and KHURSHIDA SHAIKH,

Plaintiffs,

-against-

MICHAEL CIATTO, M.D., NAZMUL KHAN, M.D.,
DAVID S. SCHNAPP, M.D., P.C., HIGHLAND
MEDICAL CARE P.L.L.C.,

Defendants.
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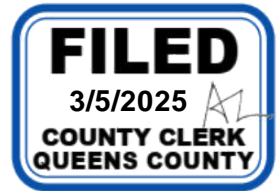
Index No. 704330/2020

Part MDP

Motion Date: January 22, 2025

Calendar No. 18

Sequence No. 1



The following papers numbered EF-50 to EF-74 read on this motion by defendants MICHAEL CIATTO, M.D. and DAVID S. SCHNAPP, M.D., P.C. for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212.

Papers
Numbered

Notice of Motion, Affirmation, Exhibits.....EF50-EF68
Affirmation in Opposition, Exhibits.....EF69-EF72
Reply Affirmation, Exhibits.....EF73-EF74

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

Defendants Michael Ciatto, M.D. and David S. Schnapp, M.D.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted, as there are no issues of fact as a matter of law to demonstrate defendant Dr. Ciatto departed from the standard of care and proximately caused plaintiffs' injuries. Plaintiffs commenced this medical malpractice action arising out of defendants' alleged failure to diagnose prostate cancer. Plaintiffs filed the Summons and Complaint on March 12, 2020, and issue was joined via the filing of defendants' Answer on July 15, 2020.

Defendants argue they are entitled to summary judgment and dismissal of plaintiffs' Complaint because they did not depart from the standard of care and did not proximately cause

plaintiffs' injuries. They present the pleadings, plaintiff Mohammad Shaikh's medical records, the parties' deposition testimony and the expert affirmation of John L. Phillips, M.D. in support of their motion. Defendants argue Dr. Ciatto properly evaluated plaintiff Mohammad Shaikh's urinary symptoms, performed appropriate exams and scheduled follow-up visits within the standard of care but plaintiff's non-compliance with Dr. Ciatto's recommendations were the proximate cause of his injuries. They further argue Dr. Ciatto did not depart from accepted urological practice, and none of his acts or omissions proximately caused plaintiff Mohammad Shaikh's injuries.

Defendants present the affirmation of Dr. John L. Phillips in support of the motion. Dr. Phillips affirmed he is licensed to practice medicine in New York and board certified in urology. He affirmed he is fully familiar with the applicable standard of care based upon his education, training and experience, and reviewed the pleadings, parties' deposition testimony and medical records in rendering opinions to a reasonable degree of medical certainty. Dr. Phillips opined the applicable standard of care is found in the U.S. Preventative Services Task Force for prostate screening, which recommends annual prostate screening and digital rectal exams for male patients fifty-five years and older who are within the high risk population.

Dr. Phillips opined to a reasonable degree of medical certainty that the care and treatment by defendants to plaintiff Mohammad Shaikh was appropriate in all respects and did not depart from the prevailing and accepted standards of care but was greatly hampered and negatively impacted by plaintiff's inability to follow up for recommended tests and evaluations for at least one year. He opined there were no alleged departures from the standard of care but plaintiff Mohammad Shaikh's noncompliance contributed to his claimed injuries and damages, and Dr. Ciatto's care and treatment did not cause any injury to plaintiff. He noted plaintiff Mohammad Shaikh first presented to defendant David S. Schnapp M.D., P.C. on March 12, 2018, where he was evaluated by Dr. Ciatto as a new patient. Dr. Phillips opined Dr. Ciatto took an appropriate history and performed proper tests on plaintiff Mohammad Shaikh within the standard of care. He noted there were several follow-up appointments scheduled and subsequently canceled and rescheduled by plaintiff Mohammad Shaikh, and plaintiff did not return to Dr. Ciatto until appropriately one year later. Dr. Phillips opined plaintiff Mohammad Shaikh's failure to return to defendants' clinic as instructed can be viewed as a failure to exercise reasonable care for his own wellbeing.

Dr. Phillips opined Dr. Ciatto properly evaluated plaintiff Mohammad Shaikh when he presented on April 3, 2019, and appropriately performed a rectal exam that revealed an enlarged non tender prostate and no palpable mass. He opined Dr. Ciatto documented all issues regarding plaintiff Mohammad Shaikh's elevated serum PSA and reviewed in detail with plaintiff, including the risks of biopsy and option to perform an MRI, and his care and treatment was within the standard of care. He opined plaintiff's failure to return to the clinic as instructed was a failure to

exercise reasonable care for his own medical wellbeing, including his failure to present for a scheduled cystoscopy on May 3, 2019. Dr. Phillips opined the standard of care required a repeat PSA prior to undergoing biopsy, and Dr. Ciatto appropriately recommended a repeat PSA after the PSA was found to be elevated on April 3, 2019. He opined Dr. Ciatto performed all necessary tests, leading to a correct diagnosis, and Dr. Ciatto provided a comprehensive workup of plaintiff Mohammad Shaikh. Dr. Phillips opined Dr. Ciatto's evaluation of plaintiff Mohammad Shaikh's urinary symptoms, finasteride effect and PSA were limited by plaintiff's noncompliance and failure to follow up with Dr. Ciatto's recommendations. He further opined plaintiff's noncompliance may have allowed undetected prostate cancer to progress, as reflected by plaintiff Mohammad Shaikh's very high PSA level of 20 ng/ml. Dr. Phillips opined Dr. Ciatto took appropriate histories, appropriately counselled plaintiff, performed appropriate rectal examinations, and scheduled follow-up visit, PSA testing and other clinical assays within the standard of care. He opined the standard work up employed by Dr. Ciatto would have led to the correct diagnosis on a timelier basis and prevented problems caused by advanced cancer including lymphatic leg swelling. Based upon the foregoing, defendants argues they did not depart from accepted standards of care or proximately cause plaintiffs' injuries, and are therefore entitled to summary judgment.

Plaintiffs oppose defendants' motion and argue there are issues of fact in dispute. They present a statement of material facts, memorandum of law and expert affirmation in opposition to defendants' motion. Plaintiffs argue defendants failed to adjust plaintiff Mohammad Shaikh's PSA levels for the known suppressive effects of finasteride, disregarded critical diagnostic opportunities and inadequately followed up on alarming PSA trends, causing a delayed diagnosis and irreparable harm. They argue defendants failed to establish a prima facie entitlement to summary judgment, and plaintiffs' expert presents conflicting opinions that warrant denial of summary judgment.

Plaintiffs present the expert affirmation of a physician licensed to practice medicine in New York and board certified in urology. The expert reviewed the parties' deposition transcripts, medical records, and radiology reports as well as Dr. Phillips' expert affirmation in rendering opinions in this matter. Plaintiffs' expert noted Dr. Ciatto saw plaintiff Mohammad Shaikh multiples times between 2018 and 2019 and while he performed tests and diagnosed Benign Prostatic Hyperplasia, he did not pursue further investigation despite elevated PSA levels. Plaintiffs' expert noted in May 2019 plaintiff Mohammad Shaikh presented to a hospital which revealed a prostate mass and bone metastasis leading to a cancer diagnosis.

Plaintiffs' expert opined to reasonable degree of medical certainty that had plaintiff Mohammad Shaikh's prostate cancer been diagnosed at Stage I or II, he would have been offered curative treatment that would have significantly improved his survival and increased the likelihood for a cure. The expert opined at that point plaintiff had a 95% chance of survival, and even with a

Stage III diagnosis, it would more than likely been 80% but Stage IV diagnosis with bone metastases has reduced his five-year survival rate to about 30%. Plaintiffs' expert opined more likely than not earlier detection would have allowed less aggressive treatment, prevented metastasis and significantly improved his quality of life and life expectancy. The expert disagreed with Dr. Phillips' opinion regarding the effect of finasteride on PSA levels, and opined Dr. Ciatto did not adjust plaintiff Mohammad Sheikh's PSA values appropriately to reflect the true level of risk. The expert further opined plaintiff Mohammad Shaikh's elevated adjusted PSA value was clearly abnormal and mandated immediate further investigation, including imaging or biopsy to rule out prostate cancer.

Plaintiffs' expert also disagreed with Dr. Phillips' opinion relying on the 2012 U.S. Preventative Services Task Force recommendations for prostate cancer, and opined plaintiff was not an asymptomatic patient, but presented with urinary symptoms and an abnormal PSA level that indicated a risk of malignancy. The expert further opined Dr. Ciatto's failure to act promptly on plaintiff Mohammad Shaikh's adjusted PSA value of 6.7 ng/ml constituted a clear deviation from the standard of care and allowed plaintiff's cancer to progress to Stage IV, at which point the disease is effectively incurable. Plaintiffs' expert opined Dr. Ciatto grossly underestimated plaintiff Mohammad Shaikh's cancer risk, a critical error that delayed appropriate diagnostic intervention. Plaintiffs' expert further opined patient noncompliance does not absolve a physician of the responsibility to ensure proper follow-up, particularly in a case of elevated cancer risk. The expert opined Dr. Ciatto's failure to emphasize the urgency of follow-up or make proactive efforts, such as contacting plaintiff or arranging closer follow-up visits, was a significant deviation from the standard of care. Plaintiffs' expert opined Dr. Ciatto's deviation more than likely than not allowed the cancer to progress unchecked and deprived plaintiff Mohammad Shaikh of an opportunity for earlier diagnosis and intervention and caused him irreparable harm, lower quality of life, and lower chances of long-term survival. Plaintiffs' expert disagreed that plaintiff was noncompliant and opined plaintiff Mohammad Shaikh attempted to address his symptoms and any delays in diagnosis were not from his noncompliance but from Dr. Ciatto's failure to promptly recognize and act on the adjusted PSA levels that clearly indicated a significant cancer risk.

Plaintiffs' expert disagreed with Dr. Phillips' opinion that Dr. Ciatto appropriately addressed plaintiff Mohammad Shaikh's rapid rise in PSA level by April 3, 2019, and opined Dr. Ciatto deviated from the standard of care by waiting a month in the face of an alarming increase in PSA levels. The expert opined a significant rise in PSA is a red flag for aggressive prostate cancer and required immediate escalation of care, including advanced imaging or biopsy. Plaintiffs' expert further opined adherence to the standard of care would have enabled earlier detection and treatment, significantly improving plaintiff's prognosis. The expert further disagreed with Dr. Phillips' opinion and opined Dr. Ciatto's evaluation of plaintiff Mohammad Shaikh's urinary symptoms and prostate examination was inadequate because it failed to prioritize the adjusted PSA abnormality, which more likely than not indicated a clear and significant risk of

malignancy. Plaintiffs' expert opined Dr. Ciatto deviated from the standard of care by focusing on urinary symptoms and ordering unrelated tests, such as a cystoscopy, instead of promptly addressing the PSA abnormality. Plaintiffs' expert further opined the cumulative impact of multiple deviations from the standard of care, including failure to adjust PSA values for finasteride use, lack of timely follow-up and inadequate response to rapidly rising PSA levels, more likely than not directly contributed to the progression of plaintiff Mohammad Shaikh's prostate cancer to Stage IV, at which point no curative treatment was possible. Based upon the foregoing, plaintiffs argue defendants are not entitled to summary judgment.

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. Nicolina & 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].) In general, a hospital may be vicariously liable for the

negligence or malpractice of its employees acting with the scope of employment under the doctrine of *respondeat superior*. (See *Valerio v. Liberty Behavioral Mgt. Corp.*, 188 A.D.3d 948 [2d Dept. 2020].)

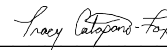
Defendants established a prima facie entitlement to summary judgment. (See *Neyman v. Doshi Diagnostic Imaging Servs., P.C.*, 153 A.D.3d 538 [2d Dept. 2017].) Defendants demonstrated prima facie that Dr. Ciatto adhered to the accepted standards of urological care and did not proximately cause plaintiff Mohammad Shaikh's injuries through the production of documentary evidence and the expert affirmation of Dr. Phillips. They demonstrated through the medical records, deposition testimony and Dr. Phillips' affirmation that Dr. Ciatto properly and timely performed physical examinations of plaintiff, obtained an appropriate history, and ordered appropriate testing. Dr. Phillips opined Dr. Ciatto's evaluation of plaintiff Mohammad Shaikh's urinary symptoms, finasteride effect and PSA were limited by plaintiff's noncompliance and failure to follow up with Dr. Ciatto's recommendations. Dr. Phillips rendered opinions based upon the applicable standard of care, and demonstrated Dr. Ciatto's plan of treatment involving prostate screening was appropriate but plaintiff Mohammad Shaikh failed to return to Dr. Ciatto's office for over one year despite instructions otherwise. Defendants further demonstrated Dr. Ciatto created an appropriate plan of treatment within the standard of care, but plaintiff Mohammad Shaikh repeatedly missed appointments, resulting in delayed diagnosis and treatment. Defendants demonstrated there were no alleged departures from the standard of care but plaintiff Mohammad Shaikh's noncompliance contributed to his claimed injuries and damages, and Dr. Ciatto's care and treatment did not cause any injury to plaintiff. Therefore, defendants established a prima facie entitlement to summary judgment.

Plaintiffs failed to raise a triable issue of fact in dispute. (See *Paglinawan v. Ing-Yann Jeng*, 211 A.D.3d 743 [2d Dept. 2022].) Plaintiffs failed to present competent, admissible evidence that defendant Dr. Ciatto departed from the standard of urological care and any alleged departures were a proximate cause of plaintiff's injuries. Plaintiffs' expert rendered opinions in conclusory fashion but failed to articulate the applicable standard of care, in particular the opinions that the PSA level should have been doubled during plaintiff Mohammad Shaikh's initial visit with Dr. Ciatto. Plaintiffs' expert also failed to sufficiently refute defendant Dr. Phillip's expert opinions that plaintiff Mohammad Shaikh's noncompliance with appointments and treatment plan was a proximate cause of the delay in diagnosis and treatment. Plaintiffs' expert opinion that Dr. Ciatto deviated from the standard of care by focusing on urinary symptoms and ordering unrelated tests, such as a cystoscopy, instead of promptly addressing the PSA abnormality is also unsupported by the medical evidence and deposition testimony. Plaintiffs' expert opined with regard to the percentage of chance of survival based upon plaintiff Mohammad Shaikh's cancer stage but failed to articulate the basis of this opinion. As plaintiffs' expert's opinions were conclusory, vague and unsupported by the medical evidence and deposition testimony, there are no issues of fact in dispute. (See *Swanson v. Raju*, 95 A.D.3d 1105 [2d Dept. 2012].)

Accordingly, defendants Michael Ciatto, M.D. and David S. Schnapp, M.D.'s motion for summary judgment and dismissal of plaintiffs' Complaint pursuant to CPLR §3212 is granted, and plaintiffs' Complaint is dismissed as to defendants Michael Ciatto, M.D. and David S. Schnapp, M.D.

This constitutes the decision and Order of the Court.

Dated: March 4, 2025



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

