

**Francois v Cruz**

2025 NY Slip Op 34423(U)

November 21, 2025

Supreme Court, New York County

Docket Number: Index No. 164956/2025

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART

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| <p>FRITZ FRANCOIS, MD, MSC, FAGC, EXECUTIVE VICE<br/>         PRESIDENT AND VICE DEAN, CHIEF OF HOSPITAL<br/>         OPERATIONS, NYU LANGONE HOSPITALS</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">- v -</p> <p>FLORENTIN CRUZ,</p> <p style="text-align: center;">Respondent.</p> | <p><b>INDEX NO.</b>            <u>164956/2025</u></p> <p><b>MOTION DATE</b>        <u>11/21/2025</u></p> <p><b>MOTION SEQ. NO.</b>    <u>001</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON<br/>         MOTION</b></p> |
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 8, 9  
 were read on this Petition to INITIATE MEDICAL TREATMENT OVER OBJECTION.

**THIS MATTER** having been brought before the Court by Fritz Francois, MD, MSc, FAGC, Executive Vice President and Vice Dean, Chief of Hospital Operations, NYU Langone Hospitals (“Petitioner”), pursuant to Public Health Law § 2994-r, for an Order authorizing the physicians and staff of NYU Langone Hospitals to perform diagnostic and treatment procedures upon Respondent Florentine Cruz, a patient at the Hospital, as may be necessary to preserve his life and health (NYSCEF 1); and the Court having appointed Aileen Gutierrez as Counsel for Respondent to protect his rights and interests in this proceeding by Order dated November 20, 2025; and a virtual hearing having been held on November 21, 2025, with the Respondent, having been present and represented by Aileen Gutierrez, Esq., and all parties having appeared for the hearing, and two attending physicians at the hospital having testified as to their determinations as to Respondent’s capacity pursuant to Public Health Law §2994-c, and Lucio Cruz, Respondent’s brother, as agent under the Health Care Proxy (NYSCEF 2), having

consented to the proposed treatment plan, and Respondent's counsel having placed her objections on the record, and Respondent having declined to testify, with due consideration thereof, the Court now finds the following:

Petitioner has established by clear and convincing evidence that Respondent lacks decision making capacity to make a reasoned decision with respect to the medical treatment recommended by his physicians (*Maldonado v R.J.*, 93 AD3d 465, 466 [1st Dept 2012]). This determination is supported by the testimony and affidavits of Dr. Ruth McCann, MD, Board Certified in Psychiatry, who testified that Respondent lacks decision-making capacity to a reasonable degree of medical certainty based on her assessment of Respondent's mental state and review of his medical records (including evidence of past strokes and the effects of his current malady), and Dr. Gregory Magee, MD, Board Certified in Vascular Surgery, who testified that he had explained to Respondent that unless the treatment plan is implemented, Respondent will likely die. As noted above, Respondent declined to testify at the hearing.

Based on the testimony at the hearing, the Court finds that Respondent exhibits a lack of rational understanding of his medical needs, insisting without basis that he be released and treated with antibiotics alone for a serious and lethal condition that plainly requires surgical intervention, and does not have the requisite capacity to refuse medical care under the circumstances. The Court also finds that the proposed treatment plan is in Respondent's best interests and is narrowly tailored to give substantive effect to Respondent's liberty interest (*In re Marietta Mc.*, 125 AD3d 581, 582 [2d Dept 2015] citing *Rivers v Katz*, 67 NY2d 485, 497[1986]).

Accordingly, it is

**ORDERED** that the Petition is **GRANTED**; it is further

**ORDERED** and **ADJUDGED**, that Respondent lacks the capacity to make a reasoned decision with respect to the medical treatment recommended by his physicians; it is further

**ORDERED and ADJUDGED** that the physicians and staff of NYU LANGONE HOSPITALS are authorized to initiate the medical treatment plan of care set forth in the Petition over the objection of respondent FLORENTIN CRUZ pursuant to Public Health Law §§2994-r and 2994-c, in the following manner:

- a. Open repair of infected aortic with removal of infected endograft, aorto-bi-iliac repair with graft and omental flap coverage.
- b. Mediations and/or restraints required for the procedure:
  - i. Likely rifampin-soaked graft as conduit;
  - ii. long-term antibiotics for suppression;
  - iii. need for routine post-operative imaging (CTAs and ultrasounds); and
  - iv. pain medication post-operatively, anesthesia (general and epidural); it is further

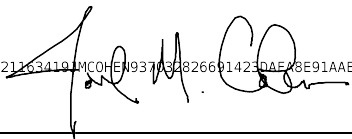
**ORDERED**, that such medical treatment may take place forthwith upon the signing of this Order and a copy of this Order shall be placed in the Patient's chart; and it is further

**ORDERED**, that Petitioner shall pay Aileen Gutierrez, Esq., as Counsel to Florentin Cruz the amount of two thousand two hundred and fifty (\$2,250.00) dollars; and it is further

**ORDERED**, that this Order shall not survive once Florentin Cruz is discharged from the NYU Langone Hospitals network system; and it is further

**ORDERED** that pursuant to 22 NYCRR §216.1, the Clerk shall maintain this case file, which contains confidential medical information, under seal to all except the parties involved and the Attorney appointed herein.

This constitutes the Decision and Order of the Court.

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11/21/2025  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: